

Having considered the measure 5.3.6.1 contained in the Action Plan for the Implementation of the National Judicial Reform Strategy 2013 - 2018 ("Official Gazette of RS", No. 71/13) and the activities defined in Item 4 regarding the implementation of said measure, for which the Supreme Court of Cassation is in charge; the Uniform Program for Reduction of the Number of Backlog Cases in the Republic of Serbia Su I-1 384 / 13-49 passed on December 25, 2013; Recommendation 1.3.7. of the Draft Action Plan for Chapter 23 (August 2014), based on the Screening Report; and the conclusions of the Working Group of the Supreme Court of Cassation for the Implementation of the Uniform Backlog Reduction Program from 8/9 November 2014, President of the Supreme Court of Cassation hereby passes the following

**SPECIAL SET OF MEASURES TO SOLVE  
THE BACKLOG OF ENFORCEMENT CASES IN THE COURTS IN SERBIA  
2015-2018**

**I**

**1. Introductory remarks**

According to the Uniform Program for Reduction of the Number of Backlog Cases in the Republic of Serbia, the key components of an effective judicial system are: quality, efficiency and independence. They provide equal protection of civil law in the legally conducted and timely proceedings carried out with respect for human and minority rights and freedoms, while efficient management and rational use of resources represent prerequisites for achieving an effective judicial system.

Efficiency indicators refer to the number of pending cases, the duration of court proceedings - which, according to European standards, also include enforcement proceedings – the cost of justice, and the level of respect for human rights.

The high number of pending cases in the courts in the Republic of Serbia and the high number of pending backlog cases – enforcement cases in particular – require comprehensive and long-term measures that should be taken throughout the country in order to increase the level of efficiency, reduce the number of backlog cases, reduce the length of court proceedings, and increase the level of public trust and confidence in the judiciary.

**2. Analysis of the efficiency**

For the purpose of creation of this Special Set of Measures to Solve the Backlog of Enforcement Cases, attention should be paid to the distinction between the basic i.e. commercial courts in the Republic of Serbia; Proper measures to solve the backlog enforcement cases should be applied in each of the courts, as according to the statistics of the Supreme Court of Cassation:

- At the end of 2012, the basic courts had a total of 2,554,917 pending cases. Out of this number, 1,654,591 were backlog cases in all the legal matters, according to the date of filing of the initial act in the court (two and more years old), 2,220,828 were pending enforcement cases ("I" and "Iv"), while 1,566,579 cases were backlog enforcement cases. In 2012, a total of 1,102 judges acted in the basic courts in Serbia, 153 of them in the enforcement matter.
- At the end of 2013, the basic courts had a total of 2,310,578 pending cases. Out of this number, 1,687,875 were backlog cases in all the legal matters, according to the date of filing of the initial act in the court (two and more years old), 1,997,724 were pending enforcement cases ("I" and "Iv"), while 1,615,830 cases were backlog enforcement cases. In 2013, a total of 1,361 judges acted in the basic courts, 224 of them in the enforcement matter.
- At the end of 2012, the commercial courts had a total of 82,731 pending cases. Out of this number, 26,775 were backlog cases in all the legal matters, according to the date of filing of the initial act in the court (two and more years old), 64,741 pending enforcement cases of all types, while 22,771 backlog enforcement cases remained pending. In 2012, a total of 142 judges acted in the commercial courts in Serbia, 63 of them in the enforcement matter.
- At the end of 2013, the commercial courts had a total of 77,213 pending cases. Out of this number, 34,217 were backlog cases in all the legal matters, according to the date of filing of the initial act in the court (two and more years old), 61,880 were pending enforcement cases of all types, while 29,872 backlog enforcement cases remained pending. In 2013, a total of 155 judges acted in the commercial courts in Serbia, while the number of judges acting in the enforcement matter remained the same in relation to the previous year - 63.

At the end of 2013, in the basic courts, out of the total number of backlog enforcement cases (1,615,830) 105,966 were "I" cases - in 10,456 of these cases the enforcement proceedings lasted more than 10 years - and 1,509,864 were "Iv" cases - in 133,780 of these cases the enforcement proceedings lasted more than 10 years.

At the end of 2013, in the commercial courts, out of the total number of backlog enforcement cases of all types (29,782), the enforcement proceedings lasted three to five years in 15,996 cases, they lasted more than five and less than ten years in 183 cases, and more than ten years in 8 cases.

According to a study conducted by the Council of Europe (and the decisions of the European Court of Human Rights), these time periods are too long, representing a clear violation of the right to a reasonable length of judicial proceedings – the judicial enforcement proceeding being one of them.

### **Measures to reduce the number of backlog enforcement cases according to the Uniform Backlog Reduction Program**

Backlog cases that are present in the basic courts are mostly from the enforcement matter, and most of them involve forced collection of claims for unpaid utilities.

As these are backlog 'Iv' cases - the enforcement of forced collection of utilities claims, these cases will not be referred to private enforcement agents; according to the present legislation, they must be concluded by the basic courts.

Given that most of these cases involve claims of public companies, it was concluded in the Uniform Backlog Reduction Program that it is necessary:

- To determine the number of backlog cases for unpaid utility services that have lasted over 10 years and the amount of debt, for the purpose of possible alternative solution of these disputes since some of them are extremely low in terms of the amount of debt.
- To investigate the possibility of writing off these claims in the cases of the poorest categories of the population, in cooperation with the founders of the public companies.
- To supplement the Law on Enforcement and Security (LoES) regarding the manner of enforcement of the so-called insignificant value claims (below 100.00 RSD, i.e. below 500.00 RSD, below 1,000.00 RSD, etc.).
- Merging of enforcement cases for the purpose of simultaneous enforcement upon the proposal of the same enforcement creditor against the same enforcement debtor, in order to achieve more efficient enforcement and reduce its cost.

### **Special set of measures to solve the backlog enforcement cases in the courts of the Republic of Serbia**

Considering the size of the backlog of enforcement cases, special measures identified in the Uniform Backlog Reduction Program are not sufficient to reduce the number of these cases on a long-term basis; consequently, it is necessary to apply additional:

#### **Systemic Measures**

- Amendment of the Law on Enforcement and Security (LoES) for the purpose of:
  - Ordering the termination of enforcement of forced collection of receivables in the amount of up to 1,000.00 RSD, in case of an unsuccessful inventory for the purpose of sale of movable assets or an unsuccessful sale of movable assets of the debtor at a public auction, unless the creditor proposes a new means of enforcement within a prescribed period of time.
  - Referral to private enforcement agents of enforcement cases filed in the court prior to 1 June 2012, according to the place of residence i.e. the seat of the debtor; competence granted to the

Chamber of Enforcement Agents regarding the referral of cases to private enforcement agents; and regulation of the fees of private enforcement agents for their work on these cases.

The law should regulate the issue of the creditors' declaration regarding the payment of a fee if the enforcement of a case is to be referred to a private enforcement agent, should such a fee be prescribed for referred cases filed in the court before 1 June 2012.

- Amendments to the provisions on the territorial jurisdiction of private enforcement agents (for these referred cases) according to the place of residence or the seat of the enforcement debtor.

### **Measures to be taken by the High Court Council**

Guidelines for the preparation of annual reports and:

- Introduction of records that display the so-called trial and non-trial matters in the annual reports, in order to display only trial matters as unsolved cases; as for the enforcement cases, the statistics would be displayed in a separate section of the report (annex).
- Separation of records of "I" and "Iv" cases, and displaying the length of proceedings: longer than two years, longer than five years, and longer than 10 years.
- Proposal to the Ministry of Justice to establish a standardized central database for all the courts in the Republic of Serbia (Roll out)
- Guidelines for the centralization of activities for the purpose of efficient implementation of enforcement in Belgrade i.e. in the larger cities in one place (one building, one auction location, one register of sales, free ads in the public media with information on the means of communication, telephone numbers and websites through which one could find out the time and place of auction and view the list of items to be sold at public auction).
- Provision of resources for the implementation of activities related to identification of the actual number of unsolved enforcement cases and the reconciliation with data on unsolved enforcement cases contained in electronic databases, and reviewing of enforcement cases individually in order to accelerate the enforcement (for example: funds for overtime work should be obtained for the enforcement judges i.e. their increased salaries - in the courts that have a large number of enforcement cases).
- Proposal for the training program for the enforcement judges

### **Measures to be taken by the Supreme Court of Cassation**

- Instructions for the preparation of the annual reports based on the guidelines of the High Court Council, and:
- Introduction of records that display the so-called trial and non-trial matters in the annual reports, in order to display only trial matters as unsolved cases; as for the enforcement cases, the statistics would be displayed in a separate section of the report (annex).
- Separation of records in "I" and "Iv" cases and displaying of the length of proceedings: longer than two years, longer than five years, and longer than 10 years.
- Instructions for the preparation of the annual schedule of tasks in the courts, with a recommendation that enforcement cases be assigned to more experienced judges and that the number of judges acting in enforcement cases be increased.
- Instructions for the preparation of individual programs for addressing the backlog enforcement cases, within the annual backlog reduction programs of individual courts.
- An order to determine the number of unsolved enforcement cases, create casefiles, merge the delivery slips, etc. and reconcile with data on unsolved enforcement cases contained in electronic databases (by use of "case by case" system).
- An order for individual reviewing of the oldest enforcement cases and acting in accordance with the legal powers to terminate the enforcement proceedings (due to poverty, lack of identification of new means of enforcement, etc.).
- Instructions to higher courts to conduct supervision twice a year in the enforcement matter, in the capacity of immediate superior courts, to visit their local basic courts and to submit reports to the Supreme Court of Cassation about said visits. The same instruction should be forwarded to the Commercial Appellate Court – for the purpose of supervising the commercial courts in the enforcement matter.
- Proposal to the Ministry of Justice to establish a standardized central database for all the courts in the Republic of Serbia (Roll out)
- Proposal for the High Court Council and the Ministry of Justice for the centralization of activities for the purpose of efficient implementation of enforcement in Belgrade i.e. in the larger cities in one place (one building, one auction location, one sales register, free ads in the public media with information on the means of communication, telephone numbers and websites, through which one could find out the time and place of auction and view the list of items to be sold in public auction).

### **Measures to be taken by the Ministry of Justice**

Provision of resources for staff members, judicial assistants, as well as awards for volunteers, for the implementation of activities to determine the number of unsolved enforcement cases, create

casefiles, merge the delivery slips, etc. and reconcile with data on unsolved enforcement cases contained in electronic databases (overtime pay in the courts that have a large number of enforcement cases, etc.).

- Modification of the existing programs for electronic case management (AVP and SAPS) to involve the activities of the Supreme Court of cassation relating to:
- Introduction of records that display the so-called trial and non-trial matters in the annual reports, in order to display only trial matters as unsolved cases; as for the enforcement cases, the statistics would be displayed in a separate section of the report (annex).
- Separation of records in "I" and "IV" cases and the display of the length of proceedings: longer than two years, longer than five years, and longer than 10 years.
- Creation of a standardized central database for all the courts in the Republic of Serbia (Roll out).
- Centralization of activities for the purpose of efficient implementation of enforcement in Belgrade i.e. in the larger cities in one place (one building, one auction location, one sales register, free ads in the public media with information on the means of communication, telephone numbers and websites, through which one could find out the time and place of auction and view the list of items to be sold in public auction), on the basis of the guidelines of the High Court Council.
- Amending the Book of Court Rules in respect to the recording of enforcement cases interrupted due to bankruptcy proceedings as cases that have been solved by the court.
- Rules on auction sale of items for the purpose of forced collection of receivables in court proceedings.
- Promotion of new judicial professions in cooperation with the Chamber of Enforcement Agents and the Chamber of Public Notaries.
- Organization of preparation for exams: the Bar Exam, the Enforcement Agents' Exam and the Public Notaries' Exam, particularly in areas where judicial assistants, private enforcement agents or public notaries are lacking.

### **Measures to be taken by the courts**

- Preparation of annual schedules of tasks and annual reports on pending enforcement cases in accordance with the guidelines of the High Court Council and the instructions of the Supreme Court of Cassation.
- Creation of individual courts' backlog reduction programs, including special backlog reduction programs for enforcement cases.

- Separation of records of pending cases in trial matters from the pending enforcement cases.
- Determination of the actual number of pending enforcement cases and reconciliation with data from the electronic databases (by use of the "case by case" system).
- Reviewing of each enforcement case and completion of casefiles.
- In misdemeanor enforcement cases, terminate all the enforcement cases that absolutely fall under the statute of limitations, and inform the courts to which cases were assigned for enforcement about the implementation of enforcement i.e. the absolute statute of limitations.
- Determination of data, via the National Bank of Serbia, on the completed enforcements; and archiving of cases in which the forced collection was implemented. As for partially collected claims, request from creditors a change of means of enforcement or acting in compliance with the law, i.e. termination of enforcement due to poverty or a contract on rescheduled debt payments signed between the creditors and debtors (EPS, Infostan, etc.), and the termination of enforcement proceedings due to bankruptcy.
- Creation of special teams to work on backlog enforcement cases.
- Recording of enforcement cases as "I" and "Iv", and displaying the length of proceedings: longer than two years, longer than five years and longer than 10 years.
- Taking external measures: signing a protocol on cooperation with the Police, the Postal Service, representatives of the media; meetings with creditors that have a large number of enforcement cases (for collection of the so-called insignificant-value claims).

### **Measures to be taken by the courts in the territory of the City of Belgrade**

In addition to the measures specified in Item 5 that should be taken by all the basic and commercial courts in the Republic of Serbia, the basic courts in Belgrade, especially the First Basic Court in Belgrade, should take measures concerning:

- The numbering and arrangement of cases, creating a casefile for each individual case.
- First record as terminated the cases in which the proposal was withdrawn (for example, about 20,000 cases in which "Infostan" is the creditor: proposals for enforcement were withdrawn in March-May 2013, June-September 2013 and June-September 2014).
- Deletion of referred cases from the electronic databases of these courts, upon distribution of cases between these three courts (a total of approximately 900,000 "Iv" enforcement cases should be distributed between these three courts)

- Preparation of cases for referral to private enforcement agents following the amendments to the LoES.
- Centralization of activities for the purpose of the implementation of enforcement in Belgrade i.e. in the larger cities in one place (one building, one auction location, one sales register, free ads in the public media with information on the means of communication, telephone numbers and websites, through which one could find out the time and place of auction and view the list of items to be sold in public auction).

### **Objectives of the Special set of measures to solve the backlog enforcement cases in the courts in the Republic of Serbia**

The objective of this special program is to reduce the total number of backlog enforcement cases in the courts of the Republic of Serbia by 80%, as described in the Uniform Backlog Reduction Program of the Supreme Court of Cassation, which means that at the end of 2018 there shouldn't be more than approximately **324,000** backlog enforcement cases in the basic courts in the Republic – in relation to 1,615,830 backlog enforcement cases that were present in the basic courts at the end of 2013, and approximately **5,800** backlog enforcement cases in the commercial courts – in relation to 29,872 backlog enforcement cases that were present in the commercial courts at the end of 2013.

## **II**

This program shall be implemented as of 20 November 2014.

I Su -1 256/2014  
Date; 18 November 2014  
B e l g r a d e

**PRESIDENT OF THE SUPREME COURT OF CASSATION**  
Dragomir Milojevic