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Amendments to the Civil Procedure Act

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Introduction

The Civil Procedure Act (CPA) is the fundamental procedural law in civil and commercial disputes in Croatia. Companies often face commercial disputes, labor disputes, administrative, enforcement, and insolvency procedures in which the CPA is applied directly or indirectly.

An efficient and predictable civil procedure is crucial for a stable business environment, protection of contractual relations, and investment promotion. The provisions of the CPA determine the conduct of procedures, deadlines, and rules of evidence, thereby directly affecting legal certainty and confidence in the system. The lengthiness of court procedures, abuse of procedural rights, and complexity of judicial procedures can have serious consequences for the financial stability and operational business of entities.

The quality of judicial conduct strongly shapes the investment climate, as investors make decisions based on legal certainty and the duration of court procedures. Effective legal protection increases confidence and promotes growth. The CPA, especially in commercial and labor disputes, not only regulates the resolution of disputes but also promotes responsible business conduct.

With this opinion, AmCham presents recommendations for ensuring the efficiency of civil procedures through procedural concentration, maintaining the continuity of hearings, and reducing unnecessary delays.

The goal is to conclude procedures in a reasonably short time while ensuring the discipline of judges, lawyers, parties to the procedure, and witnesses, as well as greater utilization of alternative dispute resolution. AmCham's proposals are fully based on the guidelines of the European Commission for the Efficiency of Justice (CEPEJ).

State of play in Croatia

At the end of 2023, the total number of unresolved cases in Croatian courts was 470,613. In 2023, all courts resolved fewer cases than they received, resulting in a 3.9% increase in the number of unresolved cases compared to the previous year. Looking at the age structure of unresolved court cases, it is evident that the largest share of the total number of unresolved cases at the end of 2023 consists of cases in which the procedures have lasted up to three years from the start date. However, the number of unresolved cases older than 7 years amounted to 17,923.[1]

A significant impact on the increase in the number of unresolved cases in 2024 was caused by the strike of judicial officials and employees (from 5 June to 26 July 2023), as well as the so-called "white strikes" of judges on two occasions (from 8 May to 19 May 2023 and from 22 January to 2 February 2024), which will have more lasting consequences given that court procedures were significantly slowed down or completely suspended during these periods.

The duration of individual disputes can vary significantly, depending on the complexity of the case, the workload of the court, and the procedural actions of the parties. In 2020, commercial civil procedures before first-instance courts lasted on average around 1,000 days, which is an increase compared to 735 days in 2019. Although most cases are resolved within a few years, some complex cases can last significantly longer, which is why it is essential to ensure that certain "simpler" cases do not burden the courts for years.[2]

The CPA is key to resolving commercial, labor, and administrative disputes, as well as enforcement and insolvency procedures. Court procedures are lengthy and often subject to abuse (such as the intentional initiation of unfounded cases or disputing legitimate claims to delay enforcement), which negatively affects the perception of the judicial system and legal protection. Even in cases where the

[1] Report of the President of the Supreme Court of the Republic of Croatia on the State of the Judicial System for 2023, Zagreb, April 2024

[2] National Development Plan for the judicial system for the period from 2022 to 2027, Zagreb, March 2022

facts are clear, court procedures can, due to various maneuvers and the (in)actions of certain participants, last for years, and sometimes even 10 to 15 years. The interval between hearings in the same case is often so long that judges and lawyers have to spend significant time reexamining the entire case file. Additionally, it is not uncommon that the judges in the case change due to the length of procedures.

Civil Procedure Act

The CPA has so far been amended thirty times, with the goal of nearly every amendment being to reduce the number of unresolved cases and shorten the duration of civil procedures. This goal was pursued by limiting the timeframe in which parties may present new facts and evidence, transitioning from a system of material truth to a system of party truth, reducing the possibility of submitting written statements, restricting the authority of the second-instance court to overturn first-instance court's decisions, and prescribing deadlines for the completion of first- and second-instance procedures.

A major problem and obstacle to achieving the aforementioned goals and the intention of the legislator lies in the fact that the specific existing provisions of the CPA, directed towards these goals, **are not being respected by the courts themselves (without any consequences)**, or that **the existing options provided by the CPA are insufficiently used by the courts**, for example:

- the provisions of the Article 434 of the CPA stipulate that a labor dispute before the first-instance court must be concluded within 6 months from the date the lawsuit is filed, while the second-instance court is required to issue a decision on an appeal against the first-instance court's decision within 30 days from the date of receipt of the appeal.

  Precise data on the average duration of labor disputes at the first and/or second instance is not available, but numerous examples in practice indicate that the aforementioned provision is not being followed.

- The provisions of Articles 492.a and c stipulate that, as a rule, in commercial disputes the court shall determine the decisive facts based on documents, and that the court may decide that the parties submit, no later than the conclusion of the preliminary procedures, written statements of the parties or witnesses with a notarized signature of the declarant, and that the hearing of the parties or witnesses be limited to asking questions for the purpose of verifying, supplementing, or clarifying the statements, if necessary. If one of the parties contests the notarized written statement of a party or witness, or if the court considers it necessary to hear the party or witness, and they subsequently fail to appear or refuse to give oral testimony, the court may apply coercive measures against the witness in accordance with Article 248. of the CPA and will not take into consideration the written statement of the party or witness.

  This possibility is insufficiently used, and courts persist in hearing witnesses in commercial disputes, which significantly affects the duration of procedures, despite the explicit legal provisions available. Furthermore, AmCham believes it would be constructive if the challenge to a notarized statement is made with respect to specific parts or claims within the statement, and that the civil court, if the statement is disputed, may (but is not obliged to) present evidence by directly hearing the witness (under the current arrangement, the options available to the presiding judge are limited, as the judge is required to hear the witness even when the opposing party challenges the written statement only in a general manner).

- When it comes to the length of procedures, if a party to legal procedures believes that the competent court has not decided on a right or obligation within a reasonable time, they have the right to judicial protection. **According to the provision of Article 185 of the CPA and established practice, court procedure should be concluded with a final judgment within three years from its initiation.**

  If a particular case before the court is not resolved within the specified reasonable time, the party may file a request for the protection of the right to a trial within a reasonable time with the court before which the procedures are being conducted, or a request for the payment of appropriate compensation for the violation of that right. According to the Courts Act, the total

appropriate compensation in a single case may not exceed EUR 4,650 and is paid from the national budget. According to data from the European Court of Human Rights, in 2023 there was an increase of 14.22% in the number of applications submitted against Croatia compared to the previous year, with the most common finding being a violation of the right to a fair trial, which includes the right to a trial within a reasonable time. Therefore, the duration of court procedures is of utmost importance for a functional judicial system and the protection of fundamental constitutional values.

Compliance with existing provisions

A significant obstacle to reducing the number of unresolved cases and shortening the duration of civil procedures lies in the fact that the specific existing provisions of the CPA are not being observed by the courts themselves (without consequences), or that the existing options provided by the CPA are insufficiently utilized by the courts. Some of them are mentioned.

In certain situations, provisions are prescribed that impose obligations on the court to act within a specific timeframe or establish certain rules of procedure, yet there are no consequences if the court fails to comply with the given rule, raising the question of the significance of such provisions. We believe that establishing procedural concentration is of utmost importance for achieving the goal of shortening the duration of civil procedures and improving their quality. However, given that the CPA, even in its earliest versions, already designates certain procedures as particularly "urgent", we consider it necessary to further strengthen compliance with these obligations by prescribing consequences for failure to adhere to them. Otherwise, the very purpose of designating certain types of civil procedures as "urgent" is called into question.

- ***AmCham's proposal***

  It is necessary to ensure in practice the adherence to prescribed deadlines and procedural rules by establishing consequences for non-compliance in the regulations governing the work of courts and the conduct of judges.

Amendments to the CPA in 2022 and 2023 introduced obligations for first-instance courts in civil procedures to develop a **procedure management plan**, with the aim of encouraging a more proactive approach by the court to case resolution and providing the parties with a sense of certainty, i.e. predictability regarding the course and conclusion of the procedure, as well as granting courts the authority to, throughout the entire civil procedures, instruct the parties to participate in an **informational meeting on mediation** or to **initiate mediation** within 15 days, taking into account all relevant circumstances, particularly the interests of the parties and third persons connected to them, as well as the duration and nature of their relationships and their interdependence. Given that these "novelties" have already been in effect for some time, we are still waiting for data on their effectiveness, and AmCham's proposals are based on their further elaboration.

Procedure management plan

Phases of civil procedures

Civil procedures before the first-instance court consist of two main parts: the preliminary procedure and the main hearing.

The preliminary procedure consists of:

- Filing a lawsuit
- Service of the lawsuit to the defendant
- Defendant's plea (response to the lawsuit)
- Preliminary hearing

The court must ensure that the preliminary hearing is held no later than 3 months after receiving the response to the lawsuit. After the court receives the lawsuit and the response to it, it has the

opportunity to determine which matters are disputed between the parties and which are undisputed in the specific case. To clarify matters with the parties, the court schedules and holds a preparatory hearing, which begins with the presentation of the lawsuit, followed by the defendant's response to the lawsuit. In practice, the parties only refer to the text of the lawsuit and the response to the lawsuit, without a more detailed examination of those materials.

The court will discuss with the parties which facts are disputed and which are undisputed. This stage of the procedure is extremely important because only the disputed facts must be established during the trial, which is a prerequisite for the further conduct of the procedure and for deciding which facts need to be proven.

After all relevant facts have been discussed, all statements and evidence proposals supplemented, and all disputed issues addressed, the court will issue a decision concluding the preliminary procedure and will draft a **procedure management plan**. The management of the court procedure timeline should be adapted to the needs of the specific case. The procedure management plan is determined by the court through a ruling, generally at the first hearing in the procedure. Before issuing the ruling on the procedure management plan, the court will allow the parties to express their views on it during the hearing.

The main hearing consists of:

- Presentation of evidence
- Oral arguments
- Closing statements of the parties

Procedure management plan elements

The procedure management plan should consist of the following elements:

Summary of disputed factual and legal issues

The court and the parties determine which legal and factual issues are key to deciding the dispute. In the procedure management plan, the court should, based on communication with the parties, determine which facts are undisputed. If the court does not clearly establish this, it could lead to problems later in the procedure. Only after that should the court determine the disputed factual and legal issues.

- ***AmCham's proposal***

  Based on communication with the parties, it should be the priority to the court to determine the undisputed facts, which will not be the subject of discussion or evidence in the further course of the procedure.

Means of evidence for establishing disputed facts and deadline for their submission

The procedure management plan determines which means of evidence will be used to establish the disputed facts, as well as the deadline for obtaining evidence that still needs to be collected. However, the consequences for failing to present certain evidence within the time frame set out in the procedure management plan are not clearly stated. The CPA itself does not prescribe consequences, and therefore, setting deadlines in the procedure management plan has no significant effect.

Therefore, if the court, for the sake of procedural efficiency, considers it necessary to set deadlines for carrying out certain actions, it should do so based on the general, pre-existing rules of the CPA, by issuing a separate ruling in which it will also inform the parties of the consequences of non-compliance.

The CPA contains a provision (Article 226) which stipulates that the court, in its decision on the presentation of evidence, shall set a deadline by which the evidence must be presented when, based on the circumstances, it can be assumed that the evidence cannot be presented or cannot be presented within a reasonable time, or if the evidence needs to be presented abroad. Once that

deadline expires, the hearing will proceed regardless of whether the specific evidence has been presented or not.

Therefore, it would be necessary to stipulate that the procedure management plan should include deadlines for obtaining evidence, as well as clear consequences for not meeting those deadlines in order to avoid inconsistent practices among judges and to ensure that the purpose of setting such deadlines is effectively achieved. Of course, taking into account the specific circumstances of the case, it is important to consider all relevant factors when setting such a deadline. Likewise, if clearly justified, it is possible to make use of the option to amend the procedure management plan.

- ***AmCham's proposal***

  The procedure management plan must clearly specify the deadlines for obtaining evidence, along with clearly defined consequences in the event of non-compliance with those deadlines.

Deadline for submitting written statements

The procedure management plan sets a deadline for the parties to submit written statements in response to the opposing party's claims as well as to the expert's report and opinion. However, the consequences of not meeting the deadline specified in the procedure management plan are not clearly defined. The CPA does not prescribe consequences for not meeting these deadlines, which raises the question of the purpose of setting deadlines that have no meaning. Therefore, if the court, for the sake of procedural efficiency, considers it necessary to set deadlines for the submission of written statements by the parties, it is essential to inform the parties of the consequences of not meeting those deadlines, so that the parties would have a clear understanding of the legal consequences of missing the deadline.

- ***AmCham's proposal***

  The procedure management plan must clearly set a deadline for the submission of written statements by the parties in response to the opposing party's claims and to the expert's findings and opinion, along with explicitly defined consequences in case of non-compliance (rejection of submissions filed after the deadline).

Date and time of the main hearing

If the main hearing is to be held over multiple sessions, the court shall, after hearing the parties, determine the date and time of all subsequent main hearing sessions, taking into account the reasonable duration of the procedure.

In practice, most judges have sought to agree with the parties on a mutually acceptable date for the next hearing, while subsequent hearings were rarely scheduled. AmCham believes it is necessary to achieve **greater concentration of the procedure.** In situations where the main hearing is to be held over multiple sessions, the court should, after hearing the parties, determine the date and time of all subsequent main hearing sessions, taking into account the reasonable duration of the procedure, and concentration and continuity of the procedure, ideally scheduling them within the same week or at intervals no longer than 96 hours.

To achieve maximum efficiency, in cases where it is necessary to present evidence through expert examination as well as the hearing of witnesses and parties, it would be advisable to schedule main hearing sessions in continuity (concentrated) after the completed expert examination.

Due to the frequent postponements of hearings caused by parties or witnesses failing to appear and informing the court of their absence too late, it is necessary to impose stricter sanctions for unjustified absences, including the risk of losing the right to present the evidence in question.

Additionally, in the case of concentrated procedure, witnesses and parties should be given the opportunity, if their absence is justified, to be rescheduled for a new (supplementary) hearing date in accordance with the already established procedure management plan (within the following days or the same week).

This would significantly improve the quality of preparation by judges and attorneys/parties for the main hearing, i.e. by concentrating the procedure, courts and attorneys would greatly reduce the time spent on preparing for the main hearing.

Since every procedure is unique, in more complex legal cases, the court should have the option to amend the procedure management plan during the course of the litigation, provided that the parties are given the opportunity to express their views on the proposed changes.

- ***AmCham's proposal***

  It is necessary to introduce concentration of the procedure in cases where the main hearing is to be held over multiple sessions, by determining the date and time of all subsequent hearings within the same week or at intervals no longer than 96 hours.
  Hearing of witnesses and parties should be scheduled after the expert examination has been conducted, in continuity.
  In situations where a hearing is postponed due to a party or witness providing late notice of their absence, it is necessary to introduce clear sanctions, including the risk of losing the right to present the evidence in question.
  In the case of a justified absence, witnesses and parties should be given the opportunity to immediately receive a new (supplementary) hearing date.

The main hearing should be held no later than 6 months after the conclusion of the preliminary procedure; however, since there are no consequences if the court fails to comply with this rule, the significance of this provision is questionable. AmCham believes that, in order to achieve the goal of shortening the duration of civil procedures and improving their overall quality, establishing concentration of the procedure is of greater importance. In order to achieve greater concentration of the procedure, AmCham proposes shortening the specified deadline to 3 months.

- ***AmCham's proposal***

  It is necessary to shorten the deadline for holding the main hearing from 6 months after the conclusion of the preliminary procedure to 3 months after the conclusion of the preliminary procedure. In the event of a violation of the provision requiring the main hearing to be held no later than 3 months after the conclusion of the preliminary procedure, it is necessary to establish measures for non-compliance with the deadlines.

When drafting the procedure management plan, and especially when setting deadlines and hearing dates, the court shall pay particular attention to the need for urgent resolution of the dispute in procedures for which urgency is prescribed by law. By prescribing short deadlines for resolution in all civil cases, the sense of "urgency" has been lost for those cases that genuinely require urgent handling and for which deadlines were already legally prescribed, but were often not respected. It is essential to establish the necessary preconditions that enable judges to resolve cases within the prescribed and expected deadlines, and after these conditions have been met, it is necessary to impose sanctions on judges who, in their work, fail to comply with explicit legal provisions.

- ***AmCham's proposal***

  It is necessary to ensure conditions that will enable judges to resolve cases within the prescribed and expected deadlines. Once this has been achieved, it is necessary to sanction judges who, in their work, fail to comply with explicit legal provisions by prescribing consequences for such non-compliance in the regulations governing the functioning of courts and the conduct of judges.

Alternative dispute resolution and mediation

Alternative dispute resolution (ADR)

Alternative dispute resolution (ADR) plays a key role in reducing the burden on the courts and shortening the duration of procedures. Although the legal framework for the implementation of ADR in Croatia has been established, its use in practice remains at a low level.

Despite the advantages it offers, such as faster, more cost-effective, and more flexible dispute resolution, mediation and arbitration in Croatia are applied to a limited extent. The majority of parties, including legal advisers, still prefer court procedures as the primary method of dispute resolution, even in cases where ADR would be significantly more appropriate. As a result, the courts are overwhelmed with a large number of cases, leading to lengthy court procedures. A broader implementation of ADR would contribute to faster dispute resolution, increased legal certainty, and strengthened trust in the judicial system.

An informational session on mediation as a mandatory part of the procedure

Provision of the Article 186.d of the CPA prescribes the possibility for the court to, taking into account all relevant circumstances, particularly the interests of the parties and third persons related to them, the duration of their relationship, and their interdependence, issue a decision, either at a hearing or outside of it, directing the parties to participate in an informational session on mediation or to initiate mediation within 15 days. This decision can be made by the court at any point during the civil procedure. It is also prescribed that the parties may jointly propose to resolve the dispute through mediation before the court, in which case the court shall, without delay, schedule a mediation meeting and invite the parties, their representatives, and attorneys, if any.

Additionally, provision of the Article 186.e of the CPA prescribes that, after filing an ordinary legal remedy, the parties may jointly submit a proposal to participate in a peaceful dispute resolution procedure before a judge-mediator of the court competent to decide on legal remedy.

Also, according to the provision of Article 9 of the Act on the Peaceful Resolution of Disputes, before initiating civil procedure for damages, except in cases involving damages arising from employment, the parties are required to attempt to amicably settle the dispute. Pursuant to the provision of the Article 10 of the same act, in civil procedure, except in disputes concerning damages arising from employment, the court is obliged, immediately upon receiving the response to the lawsuit, to instruct the parties to participate in an informational meeting on mediation within 15 days, if it determines that the parties have not attempted to amicably settle the dispute.

The amicable settlement procedure before the court (including the informational meeting on mediation and the mediation itself) is conducted by a mediator appointed from the list of mediators determined by the president of the court. A settlement reached in the amicable settlement procedure before the court and a judge-mediator is considered a court settlement.

In order to encourage the development and broader application of alternative dispute resolution, it is necessary to introduce mandatory informational meetings on mediation. This meeting would not oblige the parties to participate in the mediation process itself, but would serve to inform them about the advantages of this model of dispute resolution, including costs, available options, and the manner of its implementation. It is also necessary to consider the possibility of introducing mandatory mediation in certain types of disputes, such as labor disputes and certain commercial disputes. Such measures would contribute to reducing the burden on the courts, shortening court procedure, and increasing legal certainty and trust in the judicial system.

Similar models exist in Italy and Romania, and they have proven effective in increasing the use of ADR. In Italy, mandatory mediation in certain commercial and civil disputes has significantly reduced the number of court procedures and shortened the time needed to resolve disputes.

- ***AmCham's proposal***

  It is necessary to prescribe the introduction of a compulsory informational meeting on mediation before initiating certain court procedures.
  It is also necessary to consider the possibility of introducing mandatory mediation in certain types of disputes, such as labor disputes and certain commercial disputes.

Conclusion

The CPA is the fundamental law for conducting commercial, labor, and other disputes, thereby directly affecting business operations and the economy in Croatia. The long duration of procedures, the potential for abuse of procedural rights, the complexity of court procedures, and the insufficient use of alternative dispute resolution can have a serious negative impact on the financial stability of businesses, making efficient and predictable judicial procedures crucial for maintaining a stable business environment. Fast and efficient judicial protection has a positive impact on the investment climate, as it strengthens investors' confidence in the judicial system and enables greater investment. Also, the CPA has a key role in promoting responsible business conduct and ensuring legal certainty, which is the foundation for successful business operations.

AmCham's recommendations presented in this document have the potential to not only shorten the duration of court procedures but also to significantly improve the quality of conducted procedures, while simultaneously optimizing the use of resources of judges and attorneys.

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