

Behavior of the parties in the litigation procedure and the consequences to which it leads

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Abstract

This paper will attempt to explain in more detail certain forms of behavior of parties in civil proceedings, with an emphasis on the consequences, especially harmful ones, that affect the parties after these actions/inactions. This paper is divided into three thematic units, the first of which refers to the position of future parties before filing a lawsuit, the second to the positive and negative effects of active/passive behavior of parties in litigation, and the third specifically to the problem of passive behavior of parties in litigation. The first thematic unit emphasizes the general characteristics of the civil law relationship that leads to a civil law dispute, along with the basic features of civil proceedings and limitations when filing a lawsuit. The second thematic unit describes the effects of active or passive behavior of parties in litigation, which can be positive and negative for the party itself. The third thematic unit mentions the problem of passive behavior of parties in litigation, failure to act and thus disrespect for the court itself. The paper ends with a conclusion in which the subjective opinion of the author is presented on the subject of the behavior of parties in civil proceedings, and disputed issues related to this topic.

Keywords: Law, Economy, Behavior, Civil proceedings

Introduction

Civil rights subjects in the course of their daily activities establish certain legal relationships that are regulated by the legal order. Such a way of acting of the subjects is, in formal terms, imperceptible, until a civil law dispute arises within such a relationship regarding the threat or deprivation of certain subjective civil rights. Then a civil law dispute arises between the subjects of a civil law relationship, due to a different understanding of the scope and type of rights that arise from that civil law relationship. The dispute represents a certain pathological state in legal relationships.

While a dispute exists between the parties, the realization and realization of the subjective right is uncertain, and therefore the functioning of the legal order in a specific legal situation. As a rule, the subjects resolve the disputed relationship on the basis of an agreement, which is always based on the principle of compromise and mutual concessions. Otherwise, if an agreement cannot be reached, the subjects can resolve the disputed relationship before the competent court. As a rule, if there is no will and readiness between the parties to the dispute to resolve the disputed relationship peacefully, the legal system provides the parties to the dispute with the possibility of initiating court proceedings for the legal protection of violated subjective civil rights.

Therefore, every holder of a subjective civil (private) right that he should exercise, or protect in a relationship with another person, as well as anyone who believes or only claims (or even does not) that he is the holder of such a right, is authorized to request the court to act in the direction of exercising his subjective right in a relationship with other persons, if it is shown that this right exists.

1. Position of the subjects before filing a claim

Between subjects of civil law during the course of a legal relationship, a dispute sometimes arises regarding the scope of rights and obligations arising from that civil law relationship. These disputed issues formally prevent the possibility of carrying out legal transactions and thus lead to a disputed relationship between the subjects, which consequently leads to the emergence of a civil law dispute. A civil law dispute usually arises between subjects of a civil law relationship when there is a disagreement regarding the type and scope of subjective civil rights. A civil law dispute arises when two subjects disagree about the existence or non-existence of a civil law relationship, a civil subjective right or a civil law claim; when one party expresses one point of view, and the other party denies it or challenges it in whole or in part. As a rule, the emergence of a civil law dispute leads to a disruption of the established real relationships between subjects of civil law.

When the subjective right is not realized spontaneously, or when it is realized with certain deviations, there is a discrepancy between the normative order and the actual behavior in society, which is why the order envisioned by law has not been realized. For this reason, legal entities whose subjective civil rights have not been realized, and society itself as a whole, are forced to take measures to prevent, suppress or eliminate illegal behavior arising in social relations, as well as to apply the sanctions provided by legal norms due to the forced realization of rights.

Among participants in civil law relations, which are regulated by the substantive legal norms of civil (or any other private) law, civil law disputes about mutual (subjective) rights and their duties and obligations, and about the private law status of persons are frequent. The resolution of a civil law dispute takes place in two possible ways, namely: out of court, where the parties to a disputed civil relationship find the most acceptable solutions in the disputed civil relationship, based on the principle of compromise and mutual concessions, and in this way resolve it. Another way to resolve a disputed civil law relationship is through the courts, which is present in those disputed relationships where the subjects of the disputed civil law relationship do not have the will or desire for any compromise and compromise regarding the regulation of the scope of rights and obligations, but the resolution of the disputed relationship is entrusted to an expert, impartial and neutral body that will apply the norms of substantive law, according to a special litigation procedure provided for by law, to resolve the disputed relationship and thus decide on the rights and obligations of the subjects of that disputed civil law relationship. A person who cannot just exercise his subjective right in the usual way, has the right and the possibility to turn to the court and ask the court to provide him with legal protection, because the state, which prohibited self-help, reserved for itself the right to provide legal protection through the court.

By its legal nature, the right to legal protection is an autonomous public subjective right, which, as one of the basic human rights, is recognized and guaranteed to all legal entities by international and national legal acts. The most significant international legal document that guarantees subjective civil rights is the European Convention on the Protection of Human Rights and Freedoms. The aforementioned convention prescribes a whole series of subjective civil rights, as well as the right of the subjects of a civil law relationship to adequate legal protection of these subjective civil rights. Also, in addition to international documents, domestic regulations starting with the Constitution and other legal regulations guaranteeing subjective civil rights are of particular importance. The aforementioned regulations create the assumption that entities whose rights are threatened or violated in some other way use such permitted legal means. The existence of the

aforementioned legal instruments creates a presumption for establishing a balance between the violated subjective right and the legal mechanism for the protection of that subjective right. The aforementioned legal balance is achieved through judicial protection. By establishing a disturbed balance in the relations of legal subjects in accordance with the general norms of social behavior, the judiciary acts politically, realizing the will of the ruling class in concrete social relations.

In Bosnia and Herzegovina, there are regulations that enable citizens whose subjective rights have been violated or threatened to prove, in legal procedures and on the basis of permitted legal instruments, that their rights have been violated, taken away or limited by third parties without a legal basis, and that these same persons have the right to legal protection, all with the aim of protecting subjective civil rights. The parties in a civil dispute achieve this legal protection of threatened subjective civil rights through a civil procedure regulated by law, by filing a lawsuit before the competent court in order to protect their violated or deprived subjective civil rights. The content of the lawsuit is prescribed in the form prescribed by law, and only such a lawsuit creates a presumption for further conducting the civil proceedings and discussing the merits of the claim. Everyone, of course, has the right to have a legally established and impartial court decide fairly and within a reasonable time on his rights and obligations, but this does not mean that he has the right to have any of his claims accepted by the court.

The right to legal protection of subjective civil rights is guaranteed by the legal norms of each state. This type of legal protection is also guaranteed by the highest domestic and international legal documents such as the Constitution and international conventions. However, despite the fact that the overall legal order contains adequate legal mechanisms for the protection of threatened or violated subjective civil rights, taking into account the legal position of the defendant after the initiation of civil proceedings, a dilemma arises here as to whether the lawsuit and the civil proceedings themselves represent the only and most adequate instruments for the exercise of legal protection of subjective civil rights, or whether there are other acceptable ways that can serve the subjects of a disputed civil relationship to regulate the disputed relationship in another way other than through the court and court proceedings. In other words, the dilemma arises here as to whether all available legal remedies and legal mechanisms for resolving the civil dispute between the subjects of subjective civil rights have been sufficiently exhausted immediately before the lawsuit is filed.

It is logical that the subject, whose right is threatened or violated, has the right to legal protection, such as the right to file a lawsuit, and the right to protect his civil rights in a legal procedure. However, there are frequent cases where the defendant does not even know that he has violated or threatened certain subjective civil rights of another person through his behavior or omission. Also, there are frequent cases where the defendant only learns during the civil proceedings that civil proceedings are being conducted against him. It is very common for the same defendant to find out that a lawsuit has been filed against him, and that in most cases, without engaging in discussion, the defendant directly or indirectly acknowledges such a claim. However, despite the fact that the defendant did not dispute the claim, or rather admitted the claim immediately upon learning of the claim and the proceedings, certain legal consequences have already occurred for the defendant, which place him in a disadvantageous position as a litigant. Namely, despite the fact that the defendant admitted the claim in the described manner, the defendant is also obliged to pay the costs of the proceedings to the plaintiff, which costs in most cases are not at all harmless and small.

Sometimes these costs are much higher than the amount of the claim itself, requested by the claim. The aforementioned fact, through research into the legal position of the subjects of the disputed civil legal relationship, leads to thinking about the need to find a possible model for resolving the resulting civil law dispute, without the need to initiate and conduct civil proceedings, especially since the defendant learns of the plaintiff's intentions to file a lawsuit and initiate civil proceedings only when the plaintiff has filed a lawsuit, or when the same lawsuit has been delivered to the defendant for response. If civil proceedings were initiated regardless of the fact that the defendant did not dispute the plaintiff's claim, the filing of the lawsuit itself

caused certain legal consequences, starting with the creation of procedural costs, based on court fees, and costs based on the remuneration of the attorney-at-law, then costs in terms of engaging the courts, and loss of valuable time, and consequently, since the defendant has indirectly or directly acknowledged the claim, all these costs ultimately fall on the defendant.

One possible way to avoid the above-mentioned harmful consequences is to prescribe restrictions on the condition that the plaintiff cannot initiate civil proceedings before he or she has previously invited the other subject of the disputed civil law dispute (the potential defendant) in a certain manner to accept or acknowledge the right, with a warning that otherwise civil proceedings will be initiated against him or her by filing a lawsuit, all for the reason that the subject of the disputed civil law relationship, as a potential defendant, would be given the opportunity to acknowledge the right of the other subject and thus avoid possible civil proceedings that would be conducted against the subject of the civil law relationship.

Certain restrictions on the possibility of initiating civil proceedings before the competent courts already exist as legal restrictions. Such a restriction is prescribed by the Law on Criminal Procedure of the Federation of BiH. Namely, the aforementioned Law stipulates that the right to compensation for damages due to an unjustified conviction has the right to compensation for damages due to an unjustified conviction, and the same height.

Only if such an agreement is not reached and accepted or the Ministry does not respond at all within the legally prescribed time limit, only then does the person who has been unjustly convicted acquire the right to file a lawsuit before the competent court. The aforementioned disputed relationship between the unjustly convicted person and the state is regulated by law in the Republika Srpska in an identical manner. The aforementioned restriction, both in the Federation of Bosnia and Herzegovina and in the Republika Srpska, has been in force for a long time and has its full legal application in the procedure for deciding on the merits of a claim for compensation due to unjustified conviction. The effect of such a restriction is multiple, and is reflected in the reduction of the total costs incurred in the court proceedings, then the reduction of the number of court proceedings, and therefore the avoidance of unnecessary involvement of the court in all situations in which the opposing party assesses that it is responsible for the damage and in such situations the resulting disputed relationship is resolved without the need for the involvement of the court. A similar restriction on the ability of subjects to protect their violated rights before the competent court is prescribed by law in disputes in the field of labor relations.

Namely, according to the currently valid Labor Law of the Federation of Bosnia and Herzegovina, it is prescribed that an employee, in terms of exercising rights from the employment relationship, can exercise this right with the employer and with the competent court. Also, the same Law stipulates that an employee who believes that his right from the employment relationship has been violated, can protect his right in such a way that he is obliged to first contact the same employer within the deadline prescribed by law with a request to grant him that right. If the employer does not respond or does not comply with the worker's request within the time prescribed by the law, the same worker can demand the protection of his rights before the competent court within the time prescribed by the law, except for cases where it is about the right to compensation for damages or the right to some other monetary claim. In the specific case, the obligation of the employee to contact the employer regarding the limitation of monetary claims from salary and other benefits from the employment relationship is excluded. In a similar way, the Labor Law of the Republic of Croatia regulates the limitation regarding the realization of employee's rights from the employment relationship.

The aforementioned restriction, both in the Federation of Bosnia and Herzegovina and in the Republic of Croatia in the process of deciding on the rights of employees, in no way threatens or reduces the scope of rights, nor does it reduce the level of legal protection of these rights, but in this way the employee, whose rights are threatened or violated, is obliged to first contact the employer with a request for protection of his

legally prescribed violated or threatened rights for the purpose of possible resolution of the disputed legal relationship.

When it comes to the right of the parties to judicial protection, by filing a lawsuit before the competent court, a certain restriction regarding the right to file a lawsuit, and thus the right to judicial protection, is prescribed by the Law on Civil Procedure of the Republic of Croatia, in disputes in which the state of the Republic of Croatia appears as the defendant.

This limitation is reflected in the obligation of a person who intends to file a lawsuit against the Republic of Croatia to, before filing a lawsuit, submit a request for amicable resolution of the dispute to the State Attorney's Office, which is responsible for representing the party in the court before which the party intends to file a lawsuit against the Republic of Croatia. Such a request for amicable resolution of the dispute constitutes a procedural prerequisite for filing a lawsuit, so that any party who does not previously submit a request for amicable resolution of the dispute to the competent attorney's office, and who has filed a lawsuit, will have such a lawsuit dismissed by the court. Therefore, the court shall determine *ex officio* whether the plaintiff has filed a request for amicable resolution of the dispute before the State Attorney's Office, and whether the deadline for resolving the dispute has expired or the request has been rejected. Therefore, if the plaintiff has not complied with the provisions of Article 186/a of the Civil Procedure Code, the court shall dismiss the lawsuit in that case.

However, it is important to point out here that the aforementioned legal solutions, which on the one hand limit the party's ability to file a lawsuit, stimulate the same party to immediately, before filing a lawsuit, try to reach an agreement with the opposing party, because the agreement thus reached between the parties to the dispute has its full legal effect, in a way that the law gives the agreement thus reached the force of an enforceable title. The settlement reached between the applicant and the State Attorney's Office, based on a request for a peaceful resolution of the dispute, has the property of enforceability. If the state, as a debtor, fails to fulfill its obligation, the creditor, based on such an out-of-court settlement, may request enforcement before the competent court. The legal position of the parties to a dispute is regulated in an identical manner when the state is on the side of the plaintiff, and the defendant is a natural or legal person, and in that case the state's obligation is to contact that person with a request for a peaceful resolution of the disputed relationship before filing a lawsuit. The state of the Republic of Croatia must contact a person with a permanent residence or registered office in the Republic of Croatia before filing a lawsuit with a request for a peaceful resolution of the dispute.

The request must contain everything that a possible lawsuit must contain, and that person also has a three-month period to respond to the request. If the state does not accept such a request, or does not decide on it within three months of its submission, the state may file a lawsuit with the competent court. After concluding the agreement, the parties enjoy the same legal protection and have the same rights that they would have in court proceedings based on a merits court decision, which would have decided on the disputed relationship between the litigants. By reaching an agreement, unnecessary court proceedings have been avoided, and therefore costs that are unnecessarily incurred in court proceedings have been avoided, given that there is a will between the parties to resolve the dispute outside of court proceedings.

When it comes to the regulation of civil proceedings in Bosnia and Herzegovina, it is important to point out that the Law on Civil Procedure before the Court of Bosnia and Herzegovina, i.e., its amendments, led to a certain change in the legal approach, regarding the right of the subjects of a civil dispute to initiate civil proceedings as well as a possible peaceful resolution of a disputed civil law relationship, as an alternative to civil proceedings and filing a lawsuit. Namely, the aforementioned law enables the subjects of a civil dispute who intend to sue the state before the Court of Bosnia and Herzegovina to contact the legal representative of the state, the Attorney General's Office of Bosnia and Herzegovina, with a request for a peaceful resolution of the dispute in question.

In that case, if it is decided to attempt a peaceful resolution of the dispute, the subject of the civil law relationship is obliged to contact the Attorney General of Bosnia and Herzegovina as the legal representative of the state of Bosnia and Herzegovina with a request that must be identical in content to the lawsuit that he intends to file. As can be observed, the mentioned method of regulating a disputed civil law relationship before filing a lawsuit, and the method of legal regulation is specific because in the specific case, the law prescribes and leaves an alternative for the subject of the civil law relationship, who intends to sue the state, that he can turn to the legal representative of the state, with a request for a peaceful resolution of the dispute, or otherwise, without such an address, immediately file a lawsuit before the competent court in order to protect his civil rights.

Unlike the legal solution in the Republic of Croatia, which prescribes mandatory addressing the State Attorney's Office immediately before filing a lawsuit, the legal solution in Bosnia and Herzegovina leaves the subject of a civil law relationship the option, the alternative, to choose whether to address the request for a peaceful resolution of the dispute before filing a lawsuit, or to ignore such an option and file a lawsuit, thus opting for civil proceedings.

The aforementioned legal solution, viewed from its functional perspective, is good and as such creates a prerequisite for resolving the disputed relationship without conducting court proceedings, and therefore without involving the court. However, the aforementioned legal solution also has its shortcomings. Namely, since the Law leaves the alternative for the subject of a civil dispute to file a lawsuit before the competent court or to address the subject of the disputed civil dispute with a request for an amicable resolution of the dispute, such an alternative leaves the possibility of abuse, so that the subject of a civil dispute, when its success in the dispute is very certain, will decide to conduct court proceedings, in order to consciously create as many costs of the procedure as possible, which will ultimately fall on the burden of the opposing party, the defendant. If all of the above is taken into account, and especially if the fact that the filing of a request for amicable resolution of the dispute ceases to apply preclusive deadlines, in order to achieve the full effectiveness of the aforementioned legal provision and prevent any possibility of abuse of the aforementioned legal solution, the legal solution in force in the Republic of Croatia, which prescribes mandatory addressing with a request to the competent state attorney's office for an amicable resolution of the dispute in question as a prerequisite for filing a lawsuit, seems more acceptable.

However, in the end, it is important to point out that the legal solution prescribed by the Law on Civil Procedure before the Court of Bosnia and Herzegovina, as well as the legal solution prescribed by the Law on Civil Procedure of the Republic of Croatia, are good solutions and as such absolutely acceptable as an alternative to a possible civil procedure.

Unlike the Law on Civil Procedure before the Court of Bosnia and Herzegovina, the Law on Civil Procedure of the Federation of Bosnia and Herzegovina, the Law on Civil Procedure of the Republika Srpska, and the Law on Civil Procedure of the Brčko District, there are no restrictions on the right of subjects of civil law relations to file a lawsuit for the purpose of providing judicial protection, which leads to the conclusion that any dissatisfied party, if they believe that their legally guaranteed rights have been threatened or violated in any way, can file a lawsuit before the competent court for the protection of these rights, without having any obligation to first contact the defendant in any way and invite him to fulfill his obligation or to agree to a peaceful resolution of the dispute without the need to initiate court proceedings. If we take into account the fact that in a certain number of litigation proceedings, the defendant as a litigant, either directly or indirectly, does not dispute the claim of the plaintiff, in this particular case a legitimate question arises as to whether the current legal regulation of litigation in the Federation of Bosnia and Herzegovina, the Republic of Srpska and in the Brčko District is an adequate legal solution, and whether the possible determination of certain future legal restrictions regarding the right to judicial protection should be viewed as a better and acceptable legal solutions that do not jeopardize the elementary rights of the subject of the violated property or rights, such as

the right to judicial protection. The issue of justification, and the overall legal effect of the aforementioned restrictions regarding the party's right to judicial protection, was best determined through a review and analysis of the total number of proceedings, in which the defendant, as a party, directly or indirectly recognized the claim in accordance with the principle of affirmative litigation. The results of the research showed, in how many proceedings in relation to the total number of conducted proceedings, the defendant as a litigant did not dispute the claim, i.e. upon learning that a dispute was being filed against him, he acknowledged the same claim either indirectly or directly.

2. Effects of active and passive behavior of the parties in a litigation

The principle of modern civil trial *nemo iudex sine actore* prohibits the possibility of initiating civil proceedings *ex officio*, i.e. it requires that civil proceedings be initiated by a lawsuit. After initiation, the first-instance proceedings are further conducted *ex officio*, while proceedings under legal remedies again require the initiative of the parties. The course of the proceedings after the filing of the lawsuit primarily depends on the conduct of the parties, i.e. their use of procedural powers or performance of duties. It also depends on the actions of the court, which should encourage the parties to act actively, to direct them in terms of collecting procedural materials, and if they act passively, to react to such behavior with the means at its disposal according to the norms of civil procedure. The concept of civil procedure is such that it requires the active conduct of the parties, and passive conduct risks the occurrence of harmful consequences. Initiating civil proceedings is a matter of the plaintiff's disposition. In order to initiate the mechanisms for protecting his or her rights, the plaintiff must file a lawsuit, and in the further course of the proceedings, he or she does not have to take any procedural action, nor can he or she be forced to do so, while the defendant does not even have to take his or her first procedural action – respond to the lawsuit. The plaintiff's activity acquires the status of a party in the proceedings, which does not require the defendant to be actively involved.

The parties are not forced by law to take procedural actions, but take them because it is in their interest. The passivity of the parties that hinders, slows down, makes the proceedings more expensive or endangers the rights of the opponent, etc., has a negative effect on the proceedings. The parties' passivity often leads to long-term litigation, which violates the party's right to a trial within a reasonable time, and the procedure would, in the normal course of things, with the usual active behavior of the parties, be completed in a much shorter time. The passivity of one party most often endangers the procedural position of the other, which is why the court is authorized by law to react with available procedural means. Prescribed consequences of omission are procedural instruments that influence the procedure itself in such a way that it proceeds properly and that rights are protected even when the other party is passive. The court should allow the parties to take civil actions, but it cannot force them to do so. The active behavior of the parties, the court and other participants in the procedure is a function of the efficiency and economy of the procedure, but also a function of the implementation of the principle of *audiatur et altera pars*, according to which the parties have the right and the opportunity to express their views on the demands and allegations of the opponent.

There are two ways to respond to the parties' passivity or failure to take litigation actions. First, by applying coercion to undertake that action, which is not accepted as a method in modern procedural law because it is against the dispositive nature of the right to seek and achieve protection in civil proceedings. In addition, the parties in the litigation do not have procedural obligations, so that if they fail to do so, they would be exposed to coercion for the purpose of enforcement, so they are not obliged to take a specific procedural action. Another way of reacting to the party's passivity is the presumption of a certain procedural legal significance of the party's passivity, which regularly has an unfavorable procedural legal effect. This possibility of presumption of the meaning of the party's passivity is adopted in all modern procedural systems.

Litigation actions are manifestations of the will of the litigants made for procedural purposes, which produce a procedural legal effect in the civil procedure. They are legal facts for which the norms of procedural law bind procedural legal consequences. A civil action is also represented by failure to perform an action - the passive attitude of the parties, and their form and entities that can undertake them are prescribed by procedural rules. If the parties do not undertake actions or undertake them, but in an untimely or irregular manner, as a result of which they have no procedural legal effect, this makes the provision of legal protection significantly more difficult or impossible. The omission of litigation actions is linked to deadlines or hearings in such a way that it exists if the action is not taken or is taken beyond the prescribed deadline, that is, if access to the hearing is missed.

In general, omission is the failure to perform what is expected or required to be done in a given situation. It is independent of the party's will to omit the action or not, as well as the reasons for the omission. A party has omitted an action even if it has taken it within the deadline, but in a way that makes it procedurally legally unsuitable to produce effects due to formal or substantive deficiencies. Therefore, whether an action has been omitted can only be known when the possibility of taking it ceases or when the deadline for taking the action expires.

The passive behavior of parties in the procedure can have a negative impact on the course and outcome of the procedure, both for the parties and for the social goal of providing legal protection in civil court proceedings. Theorists of civil procedural law constantly emphasize that the duration of the procedure is an important dimension of fairness. It follows that the duration of the procedure is a kind of measure of the quality of justice. The parties are required to assist the court in advancing the priority goals of the procedure, and therefore the court must actively manage the procedure, which includes: encouraging the parties to cooperate with each other in the procedure; the need to identify issues of importance to the procedure in the early stages of the procedure; encouraging parties to use alternative dispute resolution methods, etc.

Prolonged litigation is most often the result of abuse of the procedural rights of the parties, but sometimes also the failure of the court to respond in a timely and adequate manner to the behavior of the parties, which slows down the course of the proceedings. For this purpose, during the procedure, the court is authorized and obliged to manage the procedure, which includes encouraging the parties to be active and warning them of the consequences of passivity, with the fact that the party should know what actions and with what purpose and meaning the court undertakes when it does so *ex officio*.

In addition to the parties and the court, other possible participants in the procedure are the parties' legal representatives and attorneys, witnesses, experts. These participants, with their active or passive behavior, can positively or negatively contribute to the development and completion of the procedure.

Statutory stipulation of deadlines for taking litigation actions, i.e. the loss of the right to take a missed action (preclusion) lets the party know that this is a negative consequence for its procedural position, the very knowledge of this consequence and the party's desire not to be affected by the consequence can be an incentive to take an active stance. Sometimes the law presupposes a certain legally relevant will to the passive attitude of the party and, in accordance with it, regulates procedural consequences that are regularly against the interests of the passive party.

The assumed will can significantly deviate from the real will of the passive party, so the party's knowledge of the discrepancy between his real and assumed will and the consequences of this discrepancy can be an incentive to take action in the procedure. The concept of litigation implies conflicting interests of litigating parties and mutual aspiration for success in litigation, and this is precisely the reason for the active behavior of the parties, because only activity can provide certain guarantees for success in litigation.

Despite the need for the parties to be active, they are often passive to the extent that they slow down or complicate the procedure, make it more expensive, endanger the rights of the opposing party, and harm the

general social goal of providing judicial protection of rights. Given that the parties cannot be forced to be active, in order to ensure their behavior in the procedure, the ZPP prescribed certain consequences of the passive behavior of the party or assumed the will of the passive party. The essential role of the court is to recognize the party's passivity or abuse of procedural rights in a timely manner, and to use the available procedural means to prevent it or, if necessary, sanction it. Therefore, it is up to the parties to decide - whether to be active in the proceedings and thereby open up the possibility of success in the litigation, or to be passive and thus, almost certainly, lose the litigation.

3. The problem of passive attitude of the parties in a litigation

Contumacy is a significant and interesting institute of civil procedural law both from the aspect of origin and development as well as in terms of its presence in judicial practice. In general, contumacy is disobeying orders, and in court proceedings, failure to respond to court summons is another form of contempt. A special form of default is failure to appear before the court despite summons, or hiding the party, or avoiding receiving the summons. It is the refusal or intentional omission of a person who was legally summoned to appear before the court or defend himself against what is being charged against him. In the broadest sense, contumacy is the passive behavior of a party in a proceeding that has a negative effect on the course and conclusion of civil proceedings before the court. A person who behaves in the described ways is contumax. The term contumacy in legal doctrine is used ambiguously - as the failure to take litigation actions and as a consequence of this failure. It has the meaning and significance of the disobedience of the parties to court orders, but also the legal consequences that affect the disobedient, passive party. As a consequence, it forces the defendant to join the proceedings and to be present from the beginning to the end. Legal theory recognizes general and special default. General default is identified with preclusion, and special default means the legal consequences prescribed by law for failure to take legal action.

In considering the legal nature of the contumacy decision that follows the contumacy, regarding the meaning that could be attributed to the party's passivity, three points of view were distinguished in the legal doctrine. First, the position on affirmative *litiscontestatio* of the party's passivity gives the meaning of recognition of the factual allegations of the opposing party (*qui tacet consentire videtur* – who is silent, admits). Second, the point of view of negative *litis contestatio* attributes the party's passivity to the meaning of disputing the opponent's factual allegations (*qui tacet negare videtur*), so such allegations must be proven by the party who refers to them. Third, the undecided or neutral point of view advocates that the will of the passive party is not known and is therefore not procedurally relevant. Consequently, the statements of the active party cannot be considered either true or false just because the opponent has not declared about them (*qui tacet nihil dicit*).

In the older legal doctrine in the former Yugoslavia, after they were first regulated in the Code of Civil Procedure for the Kingdom of Yugoslavia (Civil Procedure from 1929), the negative aspects and severe effects of default decisions (judgment for failure to respond to a claim and judgment for default) were often overemphasized.

In the more recent legal literature, default decisions are viewed from the perspective of the needs of modern civil procedure, which requires a faster, more efficient and cheaper procedure, but which will still maintain the basic principles of the procedure as a guarantee for the parties to obtain the requested legal protection, or to successfully defend themselves against the request for it. The understanding of the legal nature and consequences of default has undergone significant changes, but, in essence, it has always had the same characteristics and purpose, and its legislative regulation has always had the purpose that indicated the appropriate judicial procedure of that time. A civil action is a manifestation of the will of the litigants made for procedural purposes that produce a procedural legal effect in civil proceedings.

Depending on the procedural entity that undertakes the action, they can be the actions of the parties, the actions of the court and the actions of other participants in the procedure. The litigation actions of the parties are interesting for the topic in question. The types of litigation actions, their initiation, assumptions of validity and effectiveness are prescribed by the norms of procedural law. They are undertaken in order to initiate and during the proceedings, but the parties are not obliged to undertake them, but are authorized to do so, so these actions are the result of the party's disposition. The parties may undertake them by active holding, by omission or by implication.

Procedurally, the legal consequence of omission (contumacy) can be preclusion, that is, the loss of the right to take legal action, as in the case of missing the legal deadlines: for filing an appeal (Art. 203 of the ZPP); for declaring an audit (Art. 237 of the ZPP); for submitting a response to the lawsuit (Art. 70 of the ZPP); for submitting a proposal for return to the previous state (Art. 329 of the ZPP); for proposing the passing of a supplementary judgment (Art. 192 of the ZPP) or due to missing court deadlines, e.g. deadline for correcting and supplementing submissions (Art. 336, paragraph 1, ZPP).

The consequence of passivity may also consist in the fact that the law assumes the voluntary withdrawal of the submission. The submission is considered withdrawn if it is not corrected within the deadline, that is, supplemented and returned to the court at his request (Art. 336, paragraph 3, ZPP); the lawsuit is considered withdrawn if the plaintiff does not attend the preliminary hearing or the hearing for the main hearing without a justified reason (Art. 84, paragraph 1 and 97, paragraph 3 of the ZPP).

The consequence of failing to take legal action may also be in the form of a legal presumption of giving a statement of intent, for example: the defendant shall be deemed to have agreed to the withdrawal of the claim if he does not declare his intention to withdraw it within 8 days (Art. 59 of the Civil Procedure Code); the defendant shall be deemed to have agreed to the modification of the claim if he enters into the discussion of the main matter and has not previously objected to the modification of the claim (Art. 57, paragraph 2 of the Civil Procedure Code). Furthermore, the consequence may also be in the form of the rejection of the submission. For example: if a party returns an uncorrected or incomplete submission to the court, the court shall reject it (Art. 336, paragraph 3 of the Civil Procedure Code); the rejection of the claim due to deficiencies that have not been remedied within the time limit or that are of such a nature as to prevent further litigation (Art. 295, paragraph 4 of the Civil Procedure Code); rejection of the appeal if the party does not correct it or supplement it within the deadline (Art. 206, paragraph 2, ZPP).

The concept of contumacy in legal doctrine is used ambiguously - as failure to undertake litigation actions and as a consequence of failure. In essence, it is about the passive attitude of the parties in the proceedings, which harms their interest and also the purpose of legal protection in civil proceedings. Since the parties cannot be forced to undertake litigation actions, in all modern legislations the party's passivity is reacted to in such a way that the law prejudices a certain procedural legal consequence of passivity, and what kind of presumption usually has an unfavorable effect on the procedural position of the passive party.

In domestic law, the most serious consequence is the defendant's passivity (contumacy) in the form of failure to file a response to the claim, because the court issues a decision on the merits – a judgment due to the omission (contumacy decision) by which the claim is accepted, without discussion. In legal literature, the prevailing view is that the defendant's passive attitude in the form of failure to file a response to the claim has the meaning of the defendant's admission of the facts stated in the claim (affirmative *litiscontestatio*).

Conclusion

It is important to note that the main subjects of civil proceedings are the court and the parties, and they play an important role in managing the proceedings themselves.

The task of the court is to find the most appropriate measures to influence the parties in order to resolve the proceedings as quickly and efficiently as possible. When performing its duties, the court uses preventive, incentive and punitive measures. In litigation, the parties have opposing interests, so they use various forms of active and passive behavior in order to best succeed in their plan and realize their personal interests and rights. By entering into a civil law relationship, the parties acquire certain rights and obligations towards each other, from which we can conclude that when a dispute arises regarding the scope and realization of mutual rights and obligations from that relationship, civil law proceedings are initiated between them.

By introducing a limitation on the right to file a lawsuit, the defendant's position becomes significantly more favorable, thus enabling him to prevent unnecessary court proceedings immediately before initiating civil proceedings by taking an action such as an admission of guilt, and thus avoid unnecessary court costs.

This restriction greatly relieves the workload of the courts, reduces the number of cases and has a positive impact on the entire judiciary.

In civil legal proceedings, the problem of passive behavior of the parties in the litigation often arises. This behavior leads to long-term litigation, which also violates the principle of trial within a reasonable time.

The passivity of one party often harms and endangers the position of the other party, which is why the court is obliged to react with all available means. The law prescribes the consequences of omitting procedural actions and the court may apply them if the appropriate prerequisites are met.

While on the other hand, the active behavior of a party has a positive effect on the efficiency and economy of the procedure, and leads to a faster completion of the procedure.

Also, in some cases, we can observe the complete passivity of the party, i.e. the defendant, and in such cases, cases are resolved by default judgment due to omission.

From all of the above, we can conclude that during the civil procedure itself, the most diverse interests between the parties are opposed, and that the parties themselves use different forms of behavior in order to realize their rights and interests. The court's task is to ensure that the trial is conducted within a reasonable time and therefore there are certain instruments prescribed by law that enable it to realize this principle and that it can use in given cases. Also, the behavior of the parties itself leads to certain consequences, which are most often negative because in most cases they are related to the passive behavior of the defendant.

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