# ANALYSES OF THE REQUEST TO SETTLE THE DISPUTE AMICABLY IN THE CIVIL PROCEDURE ACT

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*Although the Request to settle the dispute amicably (Request) might appear uninteresting to a wider audience, as it is a mechanism which can be found in this form only in Croatian law, it is interesting and significant for more than one reason. The obligation to file a Request represents a form of alternative dispute resolution mechanism because the parties have a chance to settle their dispute outside the court. It is also interesting because of the dual role of the competent state attorney office which, as an independent judiciary body, acts both as a legal representative of the State and as an arbitrator between the disputing parties. Finally, it is interesting because it not only influences the rights of parties but also the costs parties endure in a civil procedure. The obligation of filing a Request is a positive process condition stipulated in the Croatian Civil Procedure Act. It is a general obligation that does not depend on a type of dispute but rather on a category of parties. Any natural or legal person who intends to file a civil claim against the Republic of Croatia must file a Request with the competent state attorney office. This obligation, mutatis mutandis, applies to the State. The obligation to file a Request disrupts the procedural balance. It puts in a less favourable position potential plaintiffs by delaying their right to file a lawsuit for three months. However, the analysis of the Civil Procedure Act, the Croatian case law and statistical analysis proves that positive effects of the Request significantly exceed the negative. Finally, the article also addresses the impact of the introduction of the Request to the role of deputies of state attorney. Deputies, as independent judicial officials, act similarly to an arbitrator or mediator between disputing parties during the phase of the Request.*

Keywords: Request to settle the dispute amicably, alternative dispute resolution, mediation, arbitration, positive process condition

## 1. INTRODUCTION

Although the Request to settle the dispute amicably (Request) might appear uninteresting to a wider audience as it is a mechanism which can be found in this form only in Croatian law, it is interesting and significant for more than one reason. First, the obligation to file a Request represents indeed a form of alternative dispute resolution because the parties have a chance to settle their dispute outside the court. It is also interesting because of the dual role of the state attorney office which, as an independent judiciary body, acts both as

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a legal representative of the State and as an arbitrator between the disputing parties – a state body on one side and a natural/legal person on the other. Finally, it is interesting because of its influence on the rights of parties in civil procedure and on the expenses of the parties which are, following the introduction of the adversarial principle into the civil procedure, significantly higher.

The obligation of filing a Request is a positive process condition stipulated in the Civil Procedure Act.[1] Any natural or legal person who intends to file a civil claim against the Republic of Croatia must place a Request with the competent state attorney office. This obligation, *mutatis mutandis*, applies to the State. At first glance, this general requirement may seem like a limitation of the equality principle and the right to a fair trial, and to some point it is. However, the introduction of the adversarial principle in place of the inquisitorial principle in civil procedure has given this mechanism a special meaning in regards to the right to a fair trial and the equality principle. The amendments to the Civil Procedure Act in 2013, which dramatically shortened deadlines for some actions in civil procedure, have emphasised even more the positive effects of the Request.

It is a unique mechanism because it creates a general obligation regardless of the type of dispute. Both in Croatian and comparative law, an obligation can be found to attempt to resolve a dispute amicably before filing a lawsuit in certain types of disputes.[2] However, in this case, we are talking about a general obligation that does not depend on the type of dispute but rather on a category of parties – the obligation arises from the identity of the dispute *ratione personae* rather than *ratione materiae*. Failure to meet this positive procedural precondition results in the dismissal of the claim.

Both jurisprudence, the courts, but also state attorney offices were and still are developing the Request. In exploring the Request, theory dealt with the apparent theoretical dilemmas such as the possible breach of the right to a fair trial, the constitutionality of the Request, as well as the question of the equality of all before the law. Legal scholars emphasised that the Request (especially as introduced in 2003) might be considered a breach of the right to a fair trial prescribed in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[3] Courts were, on the other hand, primarily concerned with practical questions, such as whether there is the obligation of filing a Request in cases where there is a mandatory time limit

[1] Official Gazette 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14.

[2] Article 133 of the Croatian Employment and Labour Act prescribes: 'An employee who wants to file a claim against his employer, because of the violation of his rights, has to submit to his employer a request for the realization of these rights before doing so. This does not apply to cases of claims for compensation for damages or other monetary claims arising from employment.'

[3] For example, Alan Uzelac, in „Pravo na pravično suđenje u građanskim predmetima: nova praksa Europskoga suda za ljudska prava i njen utjecaj na hrvatsko pravo i praksu", *Zbornik Pravnog fakulteta u Zagrebu* Vol. 60, No. 1, 2010, emphasises that the Request in its initial form did not completely follow the principle equality before the law because the State was not obligated to file it. He continues by saying that the Request was, partially because of the awareness that in its initial form it might be against the standards of fair procedure, modified in 2008 but was not completely abandoned.

for filing a lawsuit. Case law also resolved questions like: Does the plaintiff have the right to reimbursement of the costs of a Request, as a necessary cost of the civil procedure? Is a legal successor obliged to submit a Request in cases where his predecessor had already filed a Request? Does filing a Request cause the suspension or interruption of the statute of limitation? Does the plaintiff have to submit a Request in cases where the particular law provides a special procedure for the attempt to resolve the dispute amicably before filing a lawsuit?

This article will provides insight into the development of the Request from its introduction in the Civil Procedure Act in 2003 through its amendments in 2008,[4] 2011[5] and 2013.[6] Finally, the analysis of the Request will also include a statistical analysis of 995 Requests from the Municipal State Attorney Office in Zagreb in 2012 and relevant case law, thus giving not only an insight into this mechanism but also into its impact on civil procedure and on the rights of the parties that are subject to it.

## 2. THE DEVELOPMENT OF THE REQUEST

### 2.1. Introductory remarks

To understand the Request, we need to address some of the historical decisions and events that have shaped the Croatian legal system as it is today. On 25 June 1991 the Croatian Parliament adopted the Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia. In relation to this Constitutional Decision, the Republic of Croatia on 8 October 1991 terminated all liaisons with the Socialist Federal Republic of Yugoslavia and became an independent state. With these historic decisions, the Croatian economic and social system changed from a socialist and market socialist system to democracy, adopting pluralism and market capitalism. Even though the socioeconomic system has significantly changed, from the legal point of view not many other things have. Croatia kept the laws that were in force in the Socialist Federal Republic of Yugoslavia, provided that the provisions of those laws were in conformity with the Constitution and with the laws of the Republic Croatia. The Civil Procedure Act was no exception.

The Civil Procedure Act is the law that regulates the procedure in civil, family, commercial and employment disputes.[7] Provided the enforcement procedure is not regulated by a

[4] Official Gazette 84/2008.
[5] Official Gazette 57/2011.
[6] Official Gazette 25/2013.
[7] Article 1 of the Civil Procedure Act (Official Gazette 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14) provides: 'The Civil Procedure Act shall regulate procedural rules under which the courts shall hear and decide disputes over the fundamental rights and obligations of people and citizens, over personal and family relations and in labour, commercial, property and other civil law disputes, if the law does not provide for some of these disputes that the court shall resolve them subject to the rules of some other procedure.'

special law, it also regulates the enforcement of court and administrative body decisions (the subsidiary application of procedural rules). The first Civil Procedure Act was passed in 1977, during the Socialist Federal Republic of Yugoslavia, and until 1991 it was changed seven times. Control was embedded in the socialist regimes. The socialist regime and the need for control over civil procedure was reflected in the fact that, among other things, the inquisitorial principle was favoured over the adversarial one.[8] The Act promoted the inquisitorial principle by empowering and ordering the court to determine and produce evidence (along with the evidence presented by the parties to a dispute) in order to fully and accurately determine the facts.[9]

From 1991, after the declaration of independence and the decision to keep the Civil Procedure Act,[10] the Croatian Parliament has amended it thirteen times. Changes in 2003[11] introduced into the civil procedure the adversary principle instead of the inquisitorial one. Since then, the court can produce evidence in determining the facts only in cases in which it has reason to suspect that dispositions of the parties are against the mandatory rules or public policy.

These amendments also introduced a new mechanism - the Request to settle the dispute amicably.[12] The Request was initially a preliminary procedure for cases where the Republic of Croatia was the respondent. The Request was heavily criticised for creating a misbalance between the claimant's and the respondent's rights in cases where the State was a party. Therefore, the amendments in 2008 tried to rectify this by introducing the

[8] Alan Uzelac, in his article „Survival of the Third Legal Tradition?", *Supreme Court Law Review* (2010), 49 S.C.L.R. (2d), p. 377-396, gives very interesting analyses of the impact of the socialist regime on the judiciary and consequently on the rights of parties, but also how this tradition has developed and is still reflected in today's legal system. He points out: '... legal institutions and lawyers in the previously socialist countries have developed a specific blend of features that has a "uniquely shared something" which creates the notion of "legal tradition". Yet this "uniquely shared something" was not socialist in essence, and, as a result, it could also survive the fall of socialism…Legal professionals, especially judges and law professors, had to be skilful technicians who would always find an adequate legal form and justification for the desired (and already known) outcome… the third tradition has shown, thus far, that it is astonishingly vital, as it has hardly changed in spite of various reform projects... One Western standard that the judiciaries of the socialist legal tradition have most readily embraced is that of judicial independence… the current judicial elites, who are mostly inherited from the socialist period, have taken full control of the process of appointments to the judicial and prosecutorial posts... there are new professional associations of judges that have started to operate as specific trade unions… the political leverage of legal professionals (and, in particular, judges) has also increased, because judicial decisions now play a part in political games (and also because judges are occasionally engaged as the controllers of the general and local elections)... Further on, the professional legal elites began to be increasingly engaged in the drafting of the new legislation... This results in a situation where the projects prepared by the executive are no longer written from the perspective of the public good, but are instead the products of, to put it mildly, a double loyalty.'

[9] Article 7 of the Civil Procedure Act (Official Gazette 4/77).

[10] Official Gazette 53/91.

[11] Official Gazette 117/03.

[12] The motive for introducing the Request in the Croatian legal system is not apparent from the explanation of the amendments to the Civil Procedure Act. However, the explanation of the overall changes imply that the objective of the amendments was to simplify the procedure, to make it more efficient, and to increase the overall level of legal protection. The explanation is available at http://gpp.pravo.unizg.hr/prop isi/zpp/zpp-konprijedlog.pdf, accessed 21 June 2015.

general obligation for all parties to the dispute (including the State) in which the State was either plaintiff or respondent.

### 2.2. The establishment of the Request – Amendments to the Civil Procedure Act in 2003

The legislator introduced Article 186a in the amendments to the Civil Procedure Act in 2003. It initially provided that a person who intends to file a lawsuit against the State, before filing a claim, has to submit a Request to the competent state attorney office.[13] On the other hand, the State initially did not have such an obligation. Article 186a also introduced the enforceability of the settlement reached between the applicant and the competent state attorney office. If the competent state attorney office rejected the Request, or decided not to answer it in three months, the applicant obtained the right to file a lawsuit before the competent court. If the applicant filed the Request with a non-competent state attorney office, it would be considered as having been submitted to the competent state attorney office after the expiry of eight days. That further extended the plaintiff's right to file a lawsuit to three months and eight days. The court would dismiss the lawsuit against the State filed before these deadlines. These provisions did not apply in cases where a special law prescribed a particular procedure for the protection of rights, such as in the cases of damages due to unjustified arrests or protection of employment rights.[14]

[13] The Croatian Constitution (Article 125) and the Act on the State Attorney's Office (Article 2) stipulate: 'The state attorney office is an autonomous and independent justice body authorized and bound to act against perpetrators of criminal offences and other punishable offences, to undertake legal actions in order to protect the assets of the Republic of Croatia and to file legal remedies for the protection of the Constitution and law.' Subsequently, each state attorney office has two departments (a Criminal Department and a Civil and Administrative Department). The competent state attorney office in criminal matters prosecutes perpetrators of crime, while in civil, commercial and administrative matters and disputes it acts as a legal representative of the State.

[14] The Act on Amendments to the Civil Procedure Act (Official Gazette 117/03) added Article 186 a:
'A person who intends to file a lawsuit against the Republic of Croatia is obliged before filing the lawsuit to approach the competent state attorney office with a request to settle the dispute amicably.
If the request in paragraph 1 of this Article is lodged with a non-competent state attorney office, it shall be deemed that it was submitted to the competent state attorney office after the expiration of eight days.
The filing of a request as in paragraph 1 interrupts the running of the statute of limitations.
A settlement reached between the applicant and the state attorney office, following the request in paragraph 1 of this Article, is enforceable.
If the request in paragraph 1 of this Article is not accepted, or no decision is made on it within three months of its filing, the applicant may file a lawsuit with the competent court.
The court shall dismiss a lawsuit against the Republic of Croatia filed before a decision to settle the dispute amicably has been rendered, or before the expiration of the time limit in paragraph 2 of this Article.
The provisions of the previous paragraphs of this Article shall not apply in cases when a particular law prescribes the procedure for a request to settle the dispute amicably to be filed with the state attorney office or another body.'

The Act on the State Attorney Office prescribes that the competence of the state attorney office should be determined by the jurisdiction of the court.[15]

The provision that a Request filed with a non-competent state attorney office is considered submitted to the competent state attorney office after the expiry of eight days further deferred the court's protection. This provision resulted in an unfavourable position of clients who are unaware of the rules of conduct and even further postponed their right of access to the court for an additional eight days.

By prescribing the obligation for potential plaintiffs of the State to submit a Request (without introducing the same requirement for the State), the legislator violated the principle of equality, the right to a fair trial and delayed the right to court protection for plaintiffs who wanted to file a lawsuit against the State. The Request represented, and still represents, a positive procedural precondition. Failure to file it will result in rejection of the suit. The competent state attorney office is not only the legal representative of the State in this procedure, but also a state body that makes the settlement enforceable by authorising and signing it.

Concerning the above-mentioned points, Triva and Dika also argued that the Request gives the State a more favourable procedural position and breaches the equality principle and the right of parties to bring their case before a court.[16] Furthermore, Dika emphasised that the deferral of court protection by an additional eight days even furthers the breach of the plaintiff's right to court protection, and the equality principle.[17]

One of the questions that emerged after the Request was introduced was whether a plaintiff which must file a claim within a specified time also has to submit a Request (for

[15] The Act on the State Attorney Office (Official Gazette No. 76/09, 153/09, 116/10, 145/10, 57/11, 130/11, 72/13, 148/13, 33/15) in Arts. 31 and 32 regulate jurisdiction of state attorney offices:
„Article 31.
(1) The subject matter and territorial jurisdiction of the State Attorney Office shall be determined according to the provisions of laws that are applicable to the jurisdiction of the courts before which they exercise their powers, unless otherwise stipulated by the Act hereof.
Article 32.
(1) Municipal state attorney offices shall represent the Republic of Croatia in proceedings before municipal courts and administrative bodies, unless provided otherwise under the law or a statutory decision of a competent state body.
(2) County state attorney offices shall represent the Republic of Croatia in proceedings before county courts, commercial courts and the administrative courts, unless provided otherwise under the law or a statutory decision of a competent state body.
(3) The State Attorney Office of the Republic of Croatia shall undertake legal actions falling within its competence in order to protect the Constitution and legality before the Constitutional Court of the Republic of Croatia, it shall undertake actions falling within its competence before the Supreme Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia, and the High Administrative Court of the Republic of Croatia.
(4) The State Attorney Office of the Republic of Croatia shall undertake legal actions falling within its competence before international or foreign courts and other bodies.
(5) The State Attorney Office of the Republic of Croatia provides, at the request of state bodies, opinions on draft proposals of laws and other regulations."

[16] Triva, Siniša; Dika, Mihajlo; *Građansko parnično procesno pravo*, Narodne novine, 2004, p. 237.

[17] Dika, Mihajlo; *Građansko parnično pravo: Tužba*, Narodne novine, 2009, p. 56-67.

example, in cases of trespassing[18] or in employment disputes[19]). Failure to file a claim within the deadline has severe repercussions – the party loses the right to file a lawsuit. There were two possible interpretations of the mentioned problem. According to the first, the obligations to file a Request does not apply to disputes in which there is a mandatory time limit for bringing a lawsuit because court protection is urgent in most of those cases. According to the second interpretation, the filing of a Request would lead to an interruption of the mandatory deadlines to lodge a lawsuit. The legislator opted for the first interpretation. The obligation to submit a Request would indeed be contrary to the need for urgent judicial protection that also emanates from the duty of a court to take certain actions and make a decision within a specified time limit.[20]

### 2.3. The duty to file the Request according to the amendments to the Civil Procedure Act in 2008

Amendments to the Civil Procedure Act in 2008 significantly altered the Request. The changes addressed questions such as warnings about its unconstitutionality, the disruption of the balance of the process, the ambiguity of Article 186a, and issues regarding the conditions which pause the running of the statute of limitations.[21]

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[18] The Act on Ownership and Other Proprietary Rights (Official Gazette 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14) in Article 21 prescribes the deadline for the right to the protection of property. 'The right to protect one's possession terminates on expiration of the term of thirty days from the day on which the party whose possession was obstructed finds out about the act of obstruction and the perpetrator, and at the latest one year after the date on which obstruction began.'

[19] The Employment and Labour Act (Official Gazette 93/14) in Article 133 provides the deadline for judicial protection of labor rights. 'An employee who believes that his employer has violated a right arising from employment may, within fifteen days of receipt of a decision violating this right or of learning of the violation of the right, demand from the employer to exercise this right. If the employer within fifteen days from receipt of the request of a worker does not comply with the request, the worker may, within another fifteen days, seek the protection of the violated rights in court.'

[20] Mihajlo Dika in *Građansko parnično pravo: Tužba,* Narodne novine, 2009, p. 56-67, opted for the same solution giving the same reasons.

[21] The Act on Amendments to the Civil Procedure Act (Official Gazette in e 84/08) provides in Article 19:
'In Article 186 a, paragraphs 1, 2 and 3 are amended to read:
"Any person intending to sue the Republic of Croatia shall first, before lodging a lawsuit, address the state attorney office that has subject matter and territorial jurisdiction for representation at the court where an action against the Republic of Croatia is to be taken, with a request to settle the dispute amicably, with the exception of cases in which special regulations determine a time limit for lodging a lawsuit. Such request to resolve the dispute amicably shall include everything that must be listed in a lawsuit.
A request referred to in paragraph 1 of this Article shall be submitted to the competent state attorney office pursuant to the provisions of the Act on State Attorney Office. Where a request from paragraph 1 of this Article is presented to a state attorney office that has no jurisdiction in that case, this state attorney office shall forward the request to the state attorney office that has jurisdiction and inform the party thereof.
Where a request is submitted as referred to in paragraph 1, the statute of limitation is suspended."
After paragraph 7, paragraphs 8 and 9 shall be added which read:
"The provisions of the preceding paragraphs of this Article shall apply mutatis mutandis in cases where the Republic of Croatia intends to sue a person with a legal residence or habitual residence in the Republic of Croatia.
Where a person referred to in paragraph 8 of this Article assumes an obligation towards the Republic of Croatia on the basis of a settlement, such agreement constitutes an enforcement deed once the debtor

Article 186a from 2008 requests that, provided the law does not prescribe a deadline for submitting a lawsuit, a person who intends to file a lawsuit against the State, and vice versa, has to submit a Request. The applicant has to file the Request with a state attorney office that has territorial and subject matter jurisdiction, and it has to contain all the elements of the future lawsuit. If the applicant submits the Request to a non-competent state attorney office, it will be sent to the competent state attorney office and the applicant will be notified. Sending the Request causes the temporary suspension of the statute of limitation.[22]

A new paragraph 8 stipulates the obligation of the Republic of Croatia to act in compliance with Article 186a when it plans to file a lawsuit against a person residing or established in the Republic of Croatia.

A newly added paragraph 9 prescribes the form of the settlement. In cases where the State files a Request, settlement will be enforceable when a notary public has notarised the debtor's signature. When the State is the debtor and undertakes the obligation to fulfil its obligation, the settlement will become enforceable when signed by an authorised person and certified by the seal of the competent state attorney office.

The amendments also eliminated the concerns about the content of the Request, which, after the amendments, has to be similar to the future lawsuit. This provision is essential for the identity of the dispute; the applicant cannot any more claim in the lawsuit something he did not claim in the Request.

The legislator took into account legal scholars' warnings and changed the provision according to which the consequence of filing a Request with a non-competent state attorney office prolonged the deadline before which the applicant was not allowed to file a claim for another eight days.

Amendments to the Civil Procedure Act made significant changes concerning the consequences of applying the Request. The submission of a Request suspends (not interrupts) the statute of limitations which means that the time that has elapsed before the suspension is calculated in the legally determined deadline for the statute of limitations. Despite the clarity of provisions concerning the consequences of applying the Request, the amendments manage to raise a new dilemma. The transitional and final provisions of the amendments to the Civil Procedure Act prescribe that the changes relating to the suspension of the statute of limitation will not apply to proceedings

certifies his signature. Where the Republic of Croatia assumes an obligation towards another party on the basis of a settlement, such agreement constitutes an enforcement deed once it is signed by an authorized person in the competent state attorney office and once this signature is authenticated with a seal of that state attorney office.'

[22] Article 238 paragraph 2 of the Civil Obligation Act (Official Gazette 35/05, 41/08, 125/11) prescribes the impact of a suspension of the statute of limitations. If the statute of limitation has been suspended for a period, it continues when the suspension is over and the time that has elapsed before the suspension is calculated in the legally determined deadline for the statute of limitations. In contrast to a suspension, in the case of its interruption, the statute of limitations begins to run again after the interruption.

instituted before its entry into force. Some courts found that the civil procedure starts through the filing of the Request and not by filing the lawsuit. This interpretation eliminates the statute of limitations objection by explaining that, no matter when the claim was filed, if the Request was submitted before the commencement of the said amendments, it interrupted (not suspended) the statute of limitations.[23] Such an interpretation is contrary to the definition of the *lis pendens* (the pendency of a suit)[24] as well as Article 194 paragraph 1 of the Civil Procedure Act, which stipulates that the litigation begins with the service of the claim on the respondent. Further, if the submission of the Request causes the pendency of a suit, the applicant would be entitled to claim the cost for the Request even if the Request is rejected and the plaintiff does not file a lawsuit. Such an interpretation is unacceptable because it is well established, both in legal theory and case law, that civil proceedings start by the filing of a claim, and the court has no knowledge of the pending Request before the beginning of the civil procedure. Furthermore, accepting such an interpretation would mean that each Request should be filed with the competent court and not a state attorney office, and the court would be obliged to decide on the Request. It is clear that such an approach is unacceptable because the Request would, in that case, have all the characteristics of a lawsuit. The Request is a positive procedural precondition[25] which means that it represents one of the circumstances that should exist at the time of the filing of the lawsuit and on whose existence the admissibility of a claim depends. Thus, submitting the Request to a potential respondent does not represent the beginning of civil proceedings, but merely satisfying one of the positive procedural preconditions.

The amendments have not resolved the question whether the respondent, if he decides to file a counterclaim, should have previously filed a Request. The Supreme Court has not yet decided on this issue, so it is better to submit the Request, especially knowing that the possible sanction is dismissal of the counterclaim. Further, since the plaintiff has to submit a Request before filing a claim, it is only normal that the same obligation applies in the case of a counterclaim. Any other approach to this question would put a respondent in a more favourable position than the plaintiff. After all, if the respondent has three months to prepare his defence after receiving the Request, which may include filing a counterclaim, the plaintiff should be allowed the same rights.

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[23] In two first-instance decisions (Cases no. Pr-5132/08 and Pr-1262 / 09) the Municipal Labour Court in Zagreb decided, regarding the State objection that the complaint was ill-founded because of the statute of limitation, that the objection was baseless, citing arguments pointed out in the text. Appeals have been lodged, and the County Court has yet to rule on the motions. It is not possible to say whether this has been an issue addressed in other cases, because county courts are not obliged to publish their decisions on the internet.

[24] Legal scholars agree on the start of the pendency of a suit. Gavella explains that *lis pendent*, which starts by delivering the claim to the respondent, has not only procedural repercussions but also affects the substantive rights of the parties, and sometimes even the rights of third parties. For more on this topic, see Nikola Gavella, "O odnosu materijalnog i procesnog građanskog prava u parnicama - pogled sa stajališta privatnog (građanskog) prava ", *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 63, nos. 3-4, 2013, p. 559.

[25] For more on procedural preconditions, see, for example, Mihajlo Dika, *Građansko parnično pravo: Tužba*, Narodne novine, 2009; poglavlje 4.

When the State is a co-respondent and a plaintiff omits to file a Request, there is the question of how the court should proceed. In the event of a co-respondent, when a dispute can be resolved only in the same way for all respondents, a claim should be dismissed for all respondents because the proceedings against them cannot be conducted separately. The same would hold true for cases in which the Republic of Croatia is a plaintiff and has overlooked to file a Request. The court should, in that case, dismiss the claim.[26] In cases where the State is an ordinary co-respondent (when a court can solve a case differently for each respondent) and the plaintiff omits to file a Request, the case should be dismissed regarding the State and continued regarding the other respondents. When one of the co-litigants is the State, and it omits to file a Request, the Court should dismiss the State's lawsuit and continue the procedure regarding the claims of the other co-litigants.

Both the Civil Procedure Act of 2003 and the later amendments to the Civil Procedure Act do not stipulate the procedure concerning filing and deciding on a Request. This lacuna was partially taken care of when the State Attorney General made an obligatory Instruction that it was not mandatory for a court, but is to be followed by every state attorney office, thus promoting a uniform procedural approach and providing an equal procedure for everybody submitting a Request.

Should the parties sign a settlement, this has the meaning of a civil settlement regulated by Arts. 150 to 159 of the Civil Obligations Act,[27] but, while in the case of 'ordinary' settlement, parties usually submit something in order to resolve the dispute, in the case where a settlement is the outcome of the Request, the parties do not always submit but settle by fully accepting the claim from the Request.

### 2.4. The obligation to file the Request according to the amendments to the Civil Procedure Act in 2011

The amendments to the Civil Procedure Act in 2011 did not change the text itself of Article 186a. Nonetheless, changes affected the Request because the amendments introduced the obligation to treat the failure to file a Request as a substantial violation of civil procedure which courts should observe *ex officio*.[28] From the amendments, even if a court of first instance fails to dismiss a lawsuit when the procedure provided for in Article 186a is not

[26] Article 201 of the Civil Procedure Act provides: 'If according to the law or due to the nature of the legal relation the dispute may be resolved only in an equal manner towards all co-litigants (united co-litigants) they shall be deemed to be one party to the litigation, so that if an individual co-litigant omits one procedural action, the effect of the procedural action that the other co-litigants have taken covers those who have not taken that action.'

[27] Official Gazette 35/05, 41/08, 125/11.

[28] The Act on Amendments to the Civil Procedure Act (Official Gazette 57/11) in Article 22 (which in paragraph 2 stipulates substantial violations of the procedure) states: 'In Article 354, paragraph 2, item 12, after the word "request" the following shall be added: "If there is a prescribed legal procedure for the amicable resolution of the dispute before filing the complaint and it and such procedure was not conducted, the lawsuit should be dismissed.'

followed, the appellate court will *sua sponte* dismiss the lawsuit regardless of whether the respondent challenged the court decision on that ground.

Since omission to file a Request became a substantial violation of civil procedure, there is no doubt about whether this procedure can be considered to be waived in cases where the court of first instance failed to dismiss the claim regarding the failure to submit a Request and the respondent gave a statement of defence. In fact, this question was raised by some plaintiffs who failed to file a Request and therefore argued that the respondent waived their right to object by giving a statement of defence. They argued that giving a statement of defence is not only a waiver, but also represents the answer – to be precise, a rejection of the Request. The question is what happens in cases where the court of first instance fails to dismiss the claim because the plaintiff did not file a Request and the court of appeal dismisses the lawsuit, ordering the plaintiff to reimburse the costs of the procedure to the respondent; or when the respondent, because of this omission, cannot file a suit because of the statute of limitation. In such cases, the plaintiff could invoke Article 243, paragraph 1 of the Civil Obligations Act.[29.] The mentioned article provides that if a lawsuit against a debtor has been dismissed for a reason with no bearing on the essence of a thing, and the creditor files a suit again within a period of three months since the decision on the dismissal of the suit acquired the authority of a final judgment, the statute of limitation shall be deemed to have been interrupted by the first suit (the dismissed one). The plaintiff could also claim damages for the unlawful conduct of the court, in which case the State would, should the plaintiff succeed, request compensation from a judge who failed to dismiss the claim promptly (provided it was because of gross negligence). If a lawyer represented the plaintiff, the plaintiff could also claim damages from his lawyer. The compensation would in such cases involve the plaintiff's primary claim and the procedural costs.

### 2.5. The obligation to file the Request according to the amendments to the Civil Procedure Act in 2013

Amendments to the Civil Procedure Act in 2013 are not particularly relevant to the Request, but they significantly influenced the perception of the Request itself. In order to resolve a large number of pending cases, the legislator significantly shortened the procedural deadlines. Changes were introduced without thinking of the consequences and without taking into account the fact that, since 2003, the Civil Procedure Act had been based on the adversarial principle and the principle of formal truth. In that way, the legislator has further limited the procedural rights of the parties.

Unless parties can prove that it is not their fault, they cannot present new facts and propose new evidence after the conclusion of the preliminary procedure. In small claims disputes, the deadline is even shorter and refers to the moment of filing the claim or the

[29] Official Gazette 35/05, 41/08, 125/11

statement of defence. The possible devastating effect of these approach on parties' rights is increased in employment disputes and small claims disputes in which the deadline for the statement of defence is eight days. The Civil Procedure Act prescribes that (almost) any dispute can be a small claims dispute. Such encroachment of the parties', primarily the respondents', right made the Request, and the time it provides, particularly significant. It puts potential respondents in a better position. They have three months to prepare their defence while respondents have to give a statement of defence in 'ordinary' disputes within 30 to 45 days, and in employment disputes and small claims disputes in 8 days.

Even though the Request as such has not changed, the amendments added a new paragraph which provides the possibility that the applicant may, upon filing a Request, ask permission from the competent court to present evidence necessary to establish the facts which show that the Request is well-founded. The Municipal State Attorney Office in Zagreb, as the largest in the Republic of Croatia, has not once applied the mentioned amendment. Apparently, when parties want to settle, they not only negotiate the determination of some evidence out of court (for example, they agree on the expert's findings in determining the compensation for damages), but they also agree on who will bear the costs of conducting such evidence. This comes as no surprise. In cases where the legal basis of the Request is indisputable and only the monetary value of the Request is contestable, parties generally look for a way to settle and are willing to agree on who will bear the costs. Finally, this amendment is unnecessary because the Civil Procedure Act since 1977, in Article 168 and Article 272, has provided that if there is a justified fear that some evidence will not be presented, or that its presentation later will be difficult, the parties may propose a determination of that evidence during or even before the initiation of the litigation. The costs of proceedings for securing evidence, in that case, will be paid by the party who submitted the motion to obtain the evidence. However, that party may also subsequently receive payment of the costs as part of the litigation costs.

### 2.6. The significance of the Request in relation to the position of the parties and to the principle of truth in procedure

The positive effects of the Request were especially highlighted by amendments to the Civil Procedure Act in 2013 which affected the establishment of the facts. In small claims disputes, the establishment of the facts corresponds to the facts set out in the claim and the statement of defence. In other cases, it corresponds to the conclusion of the preliminary procedure. The preliminary procedure precedes the main hearing, and usually ends with a preparatory hearing at which parties present facts on which they found their case and propose evidence. The Request puts the respondent in a more favourable position compared to 'ordinary' respondents in cases where there is no obligation to submit a Request. The respondent has three months to prepare a statement of defence and collect evidence, which in employment and small claims disputes can be extremely significant. In fact, it is easy to imagine that in practice there will be a case where the plaintiff will file a declaratory claim regarding the legal ground of the claim,

indicate the small value of the dispute and afterwards use the judgement in court procedure as a basis for monetary compensation.[30] The respondent will have to state all relevant facts and evidence in the statement of defence. If the claimant succeeds in such a dispute he could, on the basis of a final judgment, require the payment of the monetary sum in a new court procedure that might be significantly higher than the monetary amount that applies to small claims.

Amendments to the Civil Procedure Act in 2013, whose primary goal was to achieve the concentration of the process and shorten the duration of the litigation, further affected the perception of the truth in the process. The amendments to the Civil Procedure Act in 2003 introduced the adversarial principle, which replaced the inquisitorial principle and accepted the principle of formal truth instead of the principle of material truth. It should be taken into consideration that the original Civil Procedure Act of 1977, as well as all of its mechanisms, was based on the inquisitorial principle and the right and duty of the court to determine facts and present evidence, whether or not the parties had proposed them. It is indisputable that we should aim to achieve the fast and efficient protection of rights in a civil procedure. However, that is not necessarily achieved by concentrating the procedure and shortening the deadlines for taking certain actions beyond any reasonable measure. By introducing the adversarial principle, the legislator shifted the costs of the proceedings from the court to the parties and decided to accept a concept of formal truth, meaning that the truth that is established arises from the evidence and the facts submitted only by the parties. In respect of the short deadlines for the statement of defence and the production of any relevant evidence introduced by the amendments to the Civil Procedure Act in 2013, it has to be emphasised that they not only seriously undermine procedural balance, but also call into question the respondent's right to equality of arms, the right of access to a court and can be seen as a form of denial of justice. If the amendments to the Civil Procedure Act in 2003 had not deleted part of Article 7, according to which the court had to fully and accurately determine facts (which meant that it was allowed to establish facts that the parties have not presented and hear evidence that the parties have not proposed if they were important for making a decision), the Request would not be as vital for the procedural balance as it is. However, at the same time that would impose a new dilemma. If the courts were authorised to determine fully and accurately the facts, the question is whether or not courts would be permitted, after the amendments in 2013, to establish the facts after the conclusion of the preliminary procedure. If courts were allowed to determine new facts once the preliminary procedure ended, the provisions regarding the preliminary procedure and the obligation of the parties to present all the

[30] The Civil Procedure Act in Art. 187 provides that 'the plaintiff in the lawsuit can request that the court establishes the existence or non-existence of some right or legal relationship or the authenticity or non-authenticity of a document (Declaratory Complaint).' Furthermore, Article 40, para. 2 provides that 'in cases when the claim does not relate to a monetary sum, the amount in dispute indicated by the plaintiff in the complaint shall be relevant.' From this provision it is obvious that in the case of declaratory claims, the value of the subject of the dispute will depend on the plaintiff's will and if the plaintiff indicates the value of the dispute under HRK 10,000.00 or in commercial disputes under HRK 50,000.00, the dispute will be governed by the rules for small claim disputes.

facts and evidence in the claim and the statement of defence, or at least until the conclusion of the preliminary proceeding, would entirely lose sense. Undoubtedly, discussion about the concentration of procedure takes us back to the question of establishing the truth in the process and the issue of whether the determination of formal truth in the process, together with short deadlines, represents a violation of the right to a fair trial. At this moment, it can easily happen that a formal truth becomes, in fact, the plaintiff's truth. The Request enables the respondent to prepare a statement of defence and obtain all relevant evidence. Consequently, the Request indirectly helps parties, or at least the respondent, to at least strive to establish the material truth in the court procedure. It helps not only in the protection of the right to a fair trial but also in the concentration of the court process, and thereby reduces costs.

## 3. STATISTICAL OVERVIEW AND ANALYSIS OF REQUESTS TO SETTLE THE DISPUTE AMICABLY FILED AND RECEIVED AT THE MUNICIPAL STATE ATTORNEY OFFICE IN ZAGREB IN 2012[31]

Uzelac et al. extensively deal in their article with trends in mediation for dispute settlement. Regarding the Request, they conclude: 'The attempts to reinvigorate the Request have neither changed the real situation, nor did it increase the number of settlements, which would eventually unburden courts. The number of settlements is low, and the Request became only a formality which has a small chance of success (…) One of the reasons for such an insignificant number of settlements is due to the fact that state attorney offices are responsible for settlement, but also because of the dependence of the deputies of the competent state attorney, their incompetence and their fear of making a mistake.'[32] This conclusion is wrong for several reasons. To be able to interpret statistics of any state attorney office, it is necessary to look into more than just the number of Requests, claims and settlements. Sometimes, as the statistical analyses will show, the state attorney office is faced with a large number of claims arising from the same alleged breach of right of different claimants (such as, for example, the claims for damages of prisoners because of the conditions in prison), but only factual analyses can reveal whether the claimant's request is founded or not, and the outcome of such cases can vary significantly. Resolving such cases uniformly, whether a settlement or procedure before

[31] For the purpose of writing this paper, I obtained approval from the Municipal State Attorney in Zagreb for the analysis and use of data in the N-registry of the Municipal State Attorney Office in Zagreb for the year 2012. The N-registry contains various information about the Request, such as information on the applicant and his representative, the subject and the value of the dispute, the content of the response to the request, whether the parties reached a settlement and whether proceedings were initiated in the case of a refusal of the Request, as well as the case number (for the procedure before the court) in the state attorney office. The State Attorney General of the Republic of Croatia each year submits an annual report to the Croatian Parliament and the Croatian Government. The annual reports are available on the website of the State Attorney Office of the Republic of Croatia, but this reports, due to their size and the fact that they relate to the work of all state attorney offices in criminal, civil and administrative matters cannot contain all data from the N-registry.

[32] Uzelac, Alan; Aras, Slađana; Maršić, Martina; Mitrović, Maja; Kauzlarić, Željana; Stojčević, Paula: „Aktualni trendovi mirnog rješavanja sporova u Hrvatskoj: dosezi i ograničenja", *Zbornik Pravnog fakulteta u Zagrebu*, Pravni fakultet Sveučilišta u Zagrebu, 2010, p. 1280.

the competent court, could cause significant damage to the State budget and therefore each case has to be analysed and decided separately. It is obvious that the authors do not fully understand the complexity of work of the state attorney offices from the fact that they hold relevant data that in the first seven months of 2008 the State Attorney Office in Osijek (they probably meant the Municipal State Attorney Office in Osijek) received 119 Requests and settled in only 10 cases. This ratio cannot be used for drawing any conclusion because the negotiation procedure sometimes takes months, not because of the incompetence (or laziness) of the deputies, but because the parties rarely support their Request with documents. Therefore, the deputies either ask the parties to submit relevant documentation or acquire documentation on their own in order to fully assess whether the Request is founded or not. Finally, it is not clear how the authors came to the conclusion that the Request failed because the deputies are incompetent, dependent and afraid to make a mistake, since such views are not supported by any data. While it might be argued that a deputy of a competent state attorney to whom a particular case has been assigned will sometimes have to explain to a state body why he thinks the case should be settled (which does not mean that the state attorney office is not independent, or that a state body can force a deputy to change his decision), in cases where the deputy considers whether to file a claim or not, his decision will be final no matter what the state body that initiated the procedure says. To say that deputies of the competent state attorney are not independent implies that either someone has forced them to make a decision, which is a criminal offence, or that there are reasons to believe that deputies have violated the law, which would result in a disciplinary procedure and even the possibility of their dismissal. Obviously, such cases would be recorded which means that the claims that deputies are dependent or incompetent could be and should be supported with relevant figures and data.

For all the above-mentioned reasons, but also to gain a clear picture, it is necessary to carefully analyse statistical data by taking into account the value of the settled disputes as well. Simply looking into a few figures does not give a clear picture; therefore, the statistical analyses which follow, as well as the analyses in the conclusion, will attempt to answer the question about whether the Request is successful or not. Before analysing the number and structure of the Requests submitted in 2012 to the Municipal State Attorney Office in Zagreb as the largest state attorney office, reference should be made to the general statistics of state attorney offices and their work.

It is safe to assume that the Request was introduced into the Croatian legal system to help reduce the number of pending cases and lawsuits against the State, and it seems that this goal has been achieved. However, only an in-depth analysis of individual cases can determine the reasons for the decrease in the number of lawsuits against the State. According to data, the number of lawsuits filed against Croatia from 2004 to 2010 significantly declined. The decrease in the number of claims against the State does not mean that the obligation to submit a Request intimidates potential plaintiffs. The decrease happened, as the analysis of the filed Requests in the Municipal State Attorney Office in

Zagreb shows, for several reasons. The applicants had the chance to settle their dispute through an extrajudicial but at the same time enforceable settlement. Furthermore, in cases where the competent state attorney office decided to reject the Request, the applicants received a written and reasoned decision. A decrease in the submitted lawsuits is evident from the annual reports of the State Attorney General, which also contain the exact figure of received lawsuits. Nonetheless, plaintiffs are not always required to file a Request (e.g. in the case of unauthorised deprivation of liberty). Consequently, it was necessary to analyse the submitted Request to obtain a clear picture of its impact on the number of new lawsuits against the State.

According to the annual report of the State Attorney General of 2005, the number of received lawsuits decreased by 46.2% compared to 2004 (25,558 new lawsuits were filed against the State in 2004 while this figure fell to 13,745 new suits in 2005). The number of received lawsuits was 38.5% lower in 2006 than in 2005 (8,446 claims). This trend continued in 2007 and the number of new claims against the State was 8.52% lower than in 2006 (7,725 suits). In 2008 the number of received lawsuits was 20% lower than in 2007 (6,178 claims); but in 2009 the number of lawsuits compared to the previous year increased by 20% (7,442 lawsuits). In 2010, that number was again 7% lower than in 2009 (6,909 lawsuits). In 2011, the number of lawsuits increased again by 4.56% (7,365 lawsuits). In 2012, the number of received lawsuits decreased by 9.21% (6,444 lawsuits), and in 2013 the trend of decline in the number of lawsuits continued by 9.55% (5,489 lawsuits).[33]

In 2012, the Municipal State Attorney Office in Zagreb filed and received a total of 995 Requests. The State submitted 178 Requests (17.89%), natural persons 812 Requests (81.61%), and legal persons five Requests (0.5 %). Municipal state attorney offices are not competent to represent the State before commercial courts which are in most cases competent to decide cases between legal persons, which explains the small number of Requests filed by legal persons.

| Number of the Requests by applicant | | |
|---|---|---|
| The Republic of Croatia | Natural Person | Legal Person |
| 178 | 812 | 5 |

*Table 1 – Breakdown of Requests by applicant*

The received Requests fall into a few major groups regarding the subject matter. The most common were Requests in which applicants seek compensation for damages. Next were

[33] The annual reports of the State Attorney General of the Republic of Croatia are available at http://www.dorh.hr/Default.aspx?sec=645, accessed 21 June 2016.

Requests for various payments (for compensation claimed by civil servants for violation of collective agreements), and finally Requests regarding the ownership of real estate.

Some of the lawsuits initiated by the state attorney office are not visible from the figures regarding the Request. The competent state attorney office, among other things, initiates proceedings to contest the debtor's legal transactions in cases where tax debtors donate or sell assets to avoid paying taxes (*Actio Pauliana*). According to the Civil Obligation Act, the plaintiff has to submit a claim to challenge the debtor's legal transactions within a legally specified time. Hence, the State does not have to file a Request (Art. 186a, para. 1 of the Civil Procedure Act stipulates that the applicant does not have to submit a Request when a special law determines the deadline for filing a claim).

| Subject of dispute | | | | | | |
|---|---|---|---|---|---|---|
| Payment | Payment related to employment | Employment disputes-discrimination and mobbing | Claim for damages | Ownership action | Eviction | Contestation of debtor's legal transactions |
| 254 | 201 | 7 | 334 | 174 | 20 | 5 |

*Table 2 - Analyses of Requests according to the subject matter of dispute*

Out of 334 claims for damages, 154 claims (15.47%) were submitted by individuals serving prison sentence because of the conditions in prison. Those applicants set the value of the Requests arbitrarily, usually asking HRK 150,000.00 for non-pecuniary damages because of the violation of their personal rights. According to the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,[34] Croatian prisons are overcrowded. Therefore, the applicants, referring to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (which prohibits torture, inhuman or degrading treatment or punishment) submit claims for damages for the infringement of the cited Article of the Convention. The number of Requests went up after the decision in *Testa v. Croatia* (Application no. 20877/04) in 2007. In *Testa,* the European Court of Human Rights ordered the State to pay compensation of EUR 15,000.00 for non-pecuniary damages. The compensation was for the conditions in the prison in Pozega, mainly because the claimant was, according to the Court's decision, denied health care and treatment for chronic hepatitis caused by the hepatitis C virus. The latest judgment in *Lonic v. Croatia* (Application no. 8067/12) in 2014, where the applicant was convicted to a prison sentence because of continuous acts of sexual intercourse with a child, could trigger an even greater number of lawsuits against Croatia. The European Court of Human Rights in *Lonic*, among other things, ordered the State to pay EUR10,000.00 of non-pecuniary damages for a breach of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms

[34] Reports regarding the conditions in Croatian prisons are available at http://www.cpt.coe.int/en/states/hrv.htm, accessed 17 June 2015.

because of the over crowdedness of Pula Prison. The Municipal State Attorney Office in Zagreb rejects such Requests, explaining that the overcrowdedness of prisons does not automatically imply that there has been a violation of the applicant's rights under Art. 3 of the Convention. This approach is supported by the fact that the European Court of Human Rights in Strasbourg has so far accepted only two requests against the State.

| | |
|---|---|
| Number of Requests of natural persons | 804 |
| Claims for damages | 334 |
| Claims for damages due to prison conditions | 154 |

*Table 3 - Number of Requests for damages due to prison conditions; Requests for damages in general; and number of received Requests*

In 2012, 174 individuals filed a Request concerning the applicant's right of ownership, out of whom 87 claimants sought the issuance of Permission to Register the Property Clause (*Clausula Intabulandi*). Requests regarding Permission to register are most often filed by persons who bought their real estate from companies in the former Yugoslavia which ceased to exist. If the applicant can prove succession, contracting, payment of the purchase price and possession of the property, but cannot obtain land registration due to formal deficiencies in the buying agreement, the state attorney office is authorised to issue Permission to Register the Property Clause.[35] The Municipal State Attorney Office in Zagreb concluded 31 settlements during the analysed period and issued 31 Permissions to Register the Property Clause.

| Number of Requests concerning the applicants' rights of ownership | Requests for the issuance of Permission to Register the Property Clause (*Clausula Intabulandi*) | Reached settlements concerning Requests for Permission to Register the Property Clause |
|---|---|---|
| 174 | 87 | 31 |

*Table 4 - Requests concerning the applicants' requests: regarding rights of ownership; issuance of Permission to Register the Property Clause; and reached settlements*

[35] According to Art. 215, paragraph 1 of the Land Registration Act and Art. 364, paras. 3 and 5 of the Act on Ownership and other Real Rights, a state attorney office may, under certain conditions, co-sign a contract or issue Permission to Register the Property Clause, and thus compensate for the disadvantages certain private documents have because of which they are not eligible for registration of ownership. In this way, the law allows holders of real estate to register it at a Land Registry, which is a precondition for the acquisition of property rights. In fact, during the former Yugoslavia, when social ownership was the prevailing sort of ownership, property registration in the Land Registry was entirely neglected and therefore many properties were acquired and passed to another person without a valid signature verification that is a precondition for the registration of ownership in the Land Registry. In cases where registered owners – natural or legal persons – have no legal successor, a competent state attorney office is authorised to co-sign a contract or issue Permission to Register the Property Clause.

From the registered 995 Requests, the State submitted 178 Requests (17.89%), natural persons 812 Requests (81.61%) and in 106 cases (10%) settlement was reached. Out of the settled cases, in 30 cases (16.85%) the applicant was the State, and in 76 cases (9.45%), the applicant was a natural person. From these data, it is evident that the Republic of Croatia as the claimant resolved disputes in more than 16% of cases by reaching a settlement. This saves not only budget funds, but also the means of the potential respondent who, in the event of the loss of the dispute, would be obliged to pay the cost of the procedure before a court to the State.[36] As already described, the significant number of settlements in cases where the State is the respondent relates to the recognition of property rights (40.79% of concluded settlements). Signing settlements in such cases helps avoid creating additional costs such as litigation expenses which the State would have to reimburse to the opposing party in the event of losing the case.

| Number of reached settlements | Number of settlements – when the applicant is the Republic of Croatia | Number of settlements – when the applicant is a natural person |
|---|---|---|
| 106 | 30 | 76 |

*Table 5 – Number of reached settlements by applicant*

The State filed 178 Requests, out of which it settled in 30 cases (16.85%) and filed a claim in 117 cases (65.73%). Natural persons submitted 804 Requests, out of which they settled in 76 cases (9.45%), and filed a claim in 374 cases (46.52%). In most of these cases, the courts have not yet reach a judgment, so it is not possible to report on the outcome of the filed claims.[37] When talking about the settlement it is imperative to mention one of the not so obvious negative sides of the Request which is that parties can at any moment, without consequences, terminate negotiations. Should the opposing side accept the Request and even if the parties have agreed on all the essential elements of the future settlement, but the applicant changes its mind and cancels the negotiations, the opposing side could not force the applicant to settle or sue him for damages for terminating negotiations against the principle of good faith. There was a case in which a person claimed high compensation for damages and the State Attorney Office wanted to settle. Even though the parties agreed to the compensation and other essential elements of the settlement, the applicant, seeing that he would probably succeed in a future dispute, decided to terminate the negotiations. The reasons the potential plaintiff ended the

[36] When a state attorney office represents the State, it is entitled to reimbursement of litigation expenses pursuant to the Tariff of Fees and Reimbursement of Costs for Lawyers. This follows from Article 163 of the Civil Procedure Act, which provides: 'The provisions on costs are also applied to parties who are represented by the state attorney office. In this case, the costs of the proceedings include the amount that would be allowed to the party as the attorney's fee.'

[37] According to the Annual Report for the year 2012, the State settled in 1,528 cases (the value of the reached settlements is HRK 247,423,000.00). In 2012, the courts decided in 7,214 cases in which the State was a party. In 2,674 cases (45%), the State fully succeeded, in 2,753 (46.3%) the State lost, and in 509 cases (4.8%) the State has partially lost. (Source: http://www.dorh.hr/Default.aspx?sec=645, accessed 22 June 2015).

negotiations were simple; he wanted to gain extra money from interest.[38] He filed a lawsuit just before the statute of limitations, and gained additional profit from the interest and, consequently, higher compensation than he would have received had he settled (the applicant filed the Request a few years before he filed the lawsuit). As mentioned before, the opposing party in such cases has no means to force the applicant to sign the settlement even though the parties previously agreed on the merits and the amount of the settlement.

| Republic of Croatia | | | Natural persons | | |
|---|---|---|---|---|---|
| Number of filed Requests | Number of settlements | Number of lawsuits | Number of filed Requests | Number of settlements | Number of lawsuits |
| 178 | 30 | 117 | 804 | 76 | 374 |

*Table 6 - Number of filed Requests; number of concluded settlements; and initiated civil proceedings*

In 776 cases out of 995 Requests, the recipient answered the Request. The number of responses given by the state attorney offices is of particular interest because it shows that a reasoned rejection does influence the final decision of the possible claimant. Statistical analysis shows that Croatia has received 804 Requests and responded to 669 Requests (83.20%).

| Number of answers to the Request according to: | | | |
|---|---|---|---|
| The number of Requests | The total number of answers | Answers by the Republic of Croatia | Answers by a natural person |
| 995 | 776 | 669 | 57 |

*Table 7 - Number of answers to the Request*

## 4. THE ROLE OF THE COMPETENT STATE ATTORNEY IN RESPECT TO THE REQUEST

The introduction of the Request created an interesting legal situation and gave deputies in competent state attorney offices a dual role. Deputies, as independent judicial officials, act similarly to an arbitrator/mediator between disputing parties during the phase of the Request and as a legal representative of the State in a court procedure. The procedure

[38] The Civil Obligation Act (Official Gazette no. 35/05, 41/08, 125/11) provides in Art. 1103 that the liability of just pecuniary compensation shall mature as of the date of submitting a written request or claim, unless the damage has been caused subsequently, which means that the liability of compensation in the case of the obligation to file a Request will mature when it is filed. Furthermore, the Civil Obligation Act in Article 230 provides that statute of limitation for a claim for compensation for damage is three years from the time the injured party became aware of the damage or the person causing the damage during which period the applicant is entitled to interest.

initiated by the Request in some aspects resembles hybrid processes like 'Arb-Med'.[39] The role of the deputies might be compared with the role of mediator and arbitrator because when they consider the Request of a natural/legal person they determine the facts to establish whether the Request is founded, and when they find it is founded they work on a settlement. On the other hand, when deputies of the competent state attorney office receive a Request from a state body to initiate a civil procedure they determine the facts and, depending on the facts of the case, decide either to reject the state body's request and therefore act similarly to an arbitrator, or if they find the request founded they send the Request to the other party and try to reach a settlement before commencing the procedure before the competent court, and thus act similarly to a mediator. Furthermore, the fact that the State Attorney is an independent judicial body (and deputies working in state attorney offices are judiciary officials) eliminates the possibility of excessive litigation by state authorities. This conclusion arises from the statistical analysis of the Requests filed with the Municipal State Attorney Office in Zagreb during 2012. In cases where the applicant was the Republic of Croatia, it finalised a deal in 16.85% of cases, and in 65.73% of cases the State filed a lawsuit. In 17.42% of cases, the State did not file a lawsuit or reach a settlement. The reason for this was partly that the Municipal State Attorney Office in Zagreb determined that the proceedings would be in the jurisdiction of another court, in which case it forwarded the case to the competent state attorney office, or the party had died, and there was no successor. It thus follows that the deputies of the competent state attorney office, when considering whether or not to file a Request, thoroughly determine the facts. At this stage of the proceedings competent deputy acts as an arbitrator between opposing sides. The competent deputy decides whether or not to file a Request, in which case he will decide whether to file a lawsuit or not on the basis of the established facts. The decision not to file a Request, that is to say, the decision to reject the Request of a state body to file a lawsuit against a particular person, is final. The state agency that initiated the procedure (for example, a ministry) will not be able to file a Request or, consequently a lawsuity independently. The Request also reduces the costs of the proceedings. In representing the Republic of Croatia, a state attorney office is entitled to the reimbursement of expenses (in the same way as lawyers are). According to case law, the state attorney office has the right to the costs of the response to the Request. In cases where the parties conclude a settlement, the State will not claim those costs from the opposing party. The Request also helps reduce the costs of the litigation. The respondent has sufficient time to prepare a statement of defence, collect documents, determine which witnesses he will propose and thus minimise the number of hearings and submissions before the court. Regarding the previously mentioned critics according

[39] Laurence Boulle and Miryana Nesic, in *A Review of Mediator Skills and Techniques: Triangle of Influence*, Bloomsbury Professional 2010, regarding 'arb-med' explain that 'in such a hybrid process the arbitration is followed by mediation. The arbitration typically involves a simplified process. The arbitrator makes an award in private in writing and places it in a sealed envelope, which the parties agree not to open, unless the mediation does not result in a settlement. The arbitrator then assumes the role of neutral mediator, to assist the parties to reach an agreed solution. The prospect of arbitration award represents a risk to the parties and accordingly provides an incentive for the parties to achieve settlement in mediation… The arb-med process can produce a fast result if the arbitration is simplified and the mediation is time limited.'

to whom 'one of the reasons for such an insignificant number of settlements is due to the fact that state attorney offices are responsible for settlement, but also because of the dependence of deputies of the competent state attorney, their incompetence and their fear of making a mistake.'[40] as shown in the statistical analyses, this conclusion is wrong. While founded criticism of everybody's work, including that of judiciary officials, is welcome and helps not only in improving the quality of work, but work on the protection of the parties' rights, scientifically and statistically unfounded conclusions further undermine the already disrupted belief in the judiciary and the outcome of negotiations before reaching a settlement. Finally, while it might be argued that a deputy of a competent state attorney to whom a particular case has been assigned will sometimes have to explain to a state body why he thinks the case should be settled (which does not mean that the state attorney office is not independent, or that a state body can force the deputy to change his decision), in cases where the deputy is considering whether to file a claim or not, his decision will be final no matter what the state body that initiated the procedure says. Therefore, to say that deputies of the competent state attorney are incompetent or dependent (probably on state bodies) implies that either someone has forced them to make a decision, which is a criminal offence, or that there are reasons to believe that deputies have violated the law, which would result in a disciplinary procedure and even possibly lead to their dismissal. Obviously, such cases would be recorded which means that claims of deputies' dependence or incompetence could be and should be supported with relevant figures and data.

## 5. CASE LAW

### 5.1. Introductory remarks

The highest number of judgments of the Supreme Court of the Republic of Croatia regarding the Request deals with the right to reimbursement of costs of the Request in cases where the Republic of Croatia voluntarily fulfilled an obligation upon the Request. The Supreme Court also interpreted other issues related to Article 186a of the Civil Procedure Act. Below are examples of relevant decisions of the Supreme Court which interpreted the obligation to act under Article 186a of the Civil Procedure Act.

### 5.2. The obligation to file a Request when the court's order sets out a deadline for bringing a claim

One of the issues that has arisen in practice is the question whether the plaintiff has to file a Request when the court, on the basis of a special law (in this case, the Enforcement Act) instructed the potential plaintiff to initiate litigation in a specified time. This question was

[40] Uzelac, Alan; Aras, Slađana; Maršić, Martina; Mitrović, Maja; Kauzlarić, Željana; Stojčević, Paula: „Aktualni trendovi mirnog rješavanja sporova u Hrvatskoj: dosezi i ograničenja", *Zbornik Pravnog fakulteta u Zagrebu*, Pravni fakultet Sveučilišta u Zagrebu, 2010, p. 1280.

particularly interesting until the amendments to the Civil Procedure Act in 2008 when Art. 186a, paragraph 1 was modified and when the legislator explicitly stipulated that the plaintiff does not have to submit a Request in cases where special regulations set the deadline for filing a lawsuit. The Supreme Court issued an Order No. Rev 416/10 on 14 July 2010, in which it adopted a plaintiff's revision against a court decision. The mentioned decision states: 'The revision was accepted because of a procedural question about whether the plaintiff is obligated to file a Request before filing a lawsuit against Croatia to a competent state attorney office in cases where he was ordered, according to the provisions of the Enforcement Act, to file a lawsuit to declare enforcement inadmissible in a specified time. (...) According to the provisions of Article 186a, para. 1 of the Civil Procedure Act, which applies in this case, concerning the provision of Art. 52, para. 2 of the Act on Amendments to the Civil Procedure Act (Official Gazette No. 84/08), the person who intends to file a lawsuit against Croatia is first obliged to submit a Request to the competent state attorney office. According to the provisions of para. 3 of the Article mentioned above, if the Request is not accepted or decided on within three months of its submission, the applicant may file a claim with the competent court. These provisions cannot be applied when a plaintiff has to file a claim to initiate litigation according to the court's order that also sets out a deadline for bringing a claim, because the petitioner could not act within the set deadline. To conclude, in such cases the provision of Art. 186a, para. 1 of the Code of Civil Act is inapplicable. Therefore, it was amended by the aforesaid Act on Amendments to the Civil Procedure Act in 2008 in such a way that the plaintiff does not have such obligation in cases in which special regulations determine a time limit for filing a lawsuit.'

### 5.3. The meaning of the three months' deadline for the answer to the Request in respect to claimant's rights

The Supreme Court in its decisions gave an answer to the question whether (in the event the plaintiff submits a Request, but the competent state attorney office does not respond to it) a claim can be filed before the expiry of the three months' deadline for the answer to the Request.[41] It also addressed an issue regarding which moment is relevant to determine the start of the course and the expiry of the three months' deadline. The Supreme Court in its Decision No. Rev 493/08 of 13 January 2010 rejected the revision of the plaintiff as unfounded. The Court stated: '… although the claimant filed the Request before filing a lawsuit and did not receive an answer from the state attorney office, he filed the claim before the expiry of the deadline of three months for the reply under Art. 186a

[41] The deadline for responding to the Request can be regulated by a particular law, in which case the provision of a special law has to be applied. According to Art. 9, para. 3 of the Act on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations (Official Gazette No. 117/03) the injured party is entitled to compensation for terrorist acts and other acts of violence undertaken to severely disrupt public order by intimidation and provoking a feeling of insecurity among citizens and due to demonstrations and other forms of mass expression of opinion in public places. The injured party has to file the Request and can submit a lawsuit before the competent court if the state attorney office does not answer the Request within 60 days.

of the Civil Procedure Act, after which the plaintiff may bring an action before the court to seek legal protection before the court. (...) According to the provisions of Art. 186a, para. 1 of the Civil Procedure Act, a person who intends to file a lawsuit against Croatia has previously to submit a Request to the competent state attorney office. The cited provision shows that addressing the state attorney office has the meaning of a procedural precondition in proceedings against the State. If the plaintiff has not fulfilled this condition at the time of filing the claim, the claim is not allowed, and the court should not discuss the lawsuit and decide on the merits of a claim. Therefore, the admissibility of the claim, in this case, is not decided by the time of the delivery of the claim to the respondent or the time of its rejection, as wrongly considered by the plaintiff. It is considered at the time the claim was filed. (...) It follows that at the time of filing the lawsuit, legal requirements for filing a lawsuit were not met, and the court properly dismissed the claim. Furthermore, contrary to the opinion of the plaintiff, the moment of the delivery of the claim to the respondent is not important for the admissibility of the claim. Admissibility of the lawsuit or the capacity *ad processum*, in this case, is determined according to the facts at the time of the filing of a lawsuit.'

### 5.4. The impact of predecessors Request to settle the dispute amicably on successor's obligation to file the Request

The Supreme Court decided on the question whether the plaintiff is entitled to file a lawsuit against the State in cases where the plaintiff's predecessor addressed the competent state attorney office with a Request. The Supreme Court in its decision argued that the Request is a procedural precondition for bringing a claim that is linked to a person, and not to the dispute. The fact that the legal predecessor of a potential plaintiff filed the Request to the state attorney office does not release its successor from the obligation to re-submit the Request. Consequently, the Supreme Court in its decision No. Rev 1124/06 of 14 March 2007, stated: 'The plaintiff did not file the Request to the state attorney office before filing a claim because he held that he was not required to do so given that his predecessor (assignor NG) filed the Request to the competent state attorney office. This Court accepts the legal opinion of the disputed decision that the plaintiff was not released of that obligation. A person who intends to file a lawsuit against Croatia has to first submit to the state attorney office the Request (Art. 186, para. 1 of the Civil Procedure Act). This provision applies to any "person who intends to file a lawsuit". It is a procedural precondition for bringing a lawsuit that is related to a person who intends to file it and not to the claim that the lawsuit intends to pursue. By signing the Assignment of the claim on 21 January 2006, the plaintiff acquired, other than a claim, secondary rights stipulated in Art. 81 of the Civil Obligation Act[42] and secondary rights related to

[42] Art. 81 of the Civil Obligation Act (Official Gazette No. 35/05, 41/08, 125/11) provides:
'(1) Accessory rights, such as the right to preferential payment, mortgage, the right of pledge, rights arising from a contract with a guarantor, rights to interest, contractual penalties and the like, shall pass to the assignee together with the claim.

such a claim (right of preferential payment, mortgage, right of pledge, rights arising from the contract with a guarantor, rights to interests, contractual penalties, liquidated damages, etc.), but not a right to file a lawsuit. When an assignee signs the Assignment of a claim, he becomes a creditor and can decide whether and how to exercise the claim to the debtor. If he decides to file a claim, first of all he has to submit the Request in accordance to Art. 186a, para. 1 of the Civil Procedure Act.'

### 5.5. The obligation to file the Request in respect to Article 495 of the Criminal Procedure Act

Case law gave the answer to the question whether the plaintiff has to file a Request if he has acted in accordance with Article 495, paragraph 2 of the Criminal Procedure Act.[43] According to this article the injured party is required, before bringing a civil action for the compensation of damages, to submit a request to the Ministry of Justice in order to try to reach a settlement on the existence of damage and the type and amount of compensation. The Supreme Court not only ruled that the plaintiff is not required to file a Request, which is expressly provided for in paragraph 7 of Article 186a of the Civil Procedure Act, but went a step further and interpreted the obligations of plaintiffs when they emerge from Article 495, para. 2 of the Criminal Procedure Act. The Court stated that the request referred to in Article. 495 para. 2 of the Criminal Procedure Act is not a procedural precondition, as is the case in Art. 186a of the Civil Procedure Act. Therefore, the failure of the plaintiff to file a request for a settlement with the Ministry of Justice cannot result in rejection of the claim. The Supreme Court, in its decision No, Revr 530/07 of 5 December 2007 stated: 'The subject matter of the dispute is a claim for damages and other rights of a plaintiff after the suspension of criminal proceedings conducted against the claimant. The first-instance court dismissed the lawsuit because the petitioner did not file a Request with the competent state attorney office before filing a lawsuit against the State, meaning that he has not met the positive procedural precondition for initiating litigation. It is clear that the plaintiff did not, before filing this claim, file the Request before a competent state attorney office. However, in accordance with the provisions of the Criminal Procedure Act (Official Gazette No. 62/03), the plaintiff filed on 10 October 2003, a request for compensation and a settlement to the Ministry of Justice. Therefore, the court of appeal overturned the first-instance decision only in the part of the claim for which the plaintiff addressed the Ministry of Justice. The plaintiff in his revision justifiably argued that he was not under an obligation to act under the provisions of Art. 186a of the Civil Procedure Act before filing a lawsuit for damages against the Republic of Croatia. In this case, the special law (Criminal Procedure Act) establishes the procedure for a request to settle the dispute amicably by stating that it has to be filed to another state body - the Ministry of Justice. Articles 494 to 503 of the Criminal Procedure Act stipulate who has

(2) However, an assignor may deliver the thing pledged to the assignee only should the pledger agree; otherwise it shall remain with the assignor to be kept by him for the account of the assignee.
(3) It shall be presumed that due and outstanding interest is assigned together with the principal claim.'

[43] Official Gazette No. 62/03.

the right to compensation, in what amount, as well as the type of damages and other rights the respondent has after the suspension of criminal proceedings against him. It also stipulates how an applicant can exercise these rights. The provision of Art. 495, para. 2 of the Criminal Procedure Act states: 'Before bringing a civil action for the compensation of damages, the injured person is bound to submit his request to the Ministry of Justice in order to reach a settlement on the existence of damage and the type and amount of compensation. Art. 495, para. 2 of the Criminal Procedure Act, according to the understanding of the Supreme Court, should not be interpreted as a procedural precondition for initiating litigation for damages before a civil court, as is the case with the provision of Art. 186a of the Civil Procedure Act, which expressly provides that, in the case of not filing the Request, the claim should be dismissed. Art. 495 of the Criminal Procedure Act should be understood as a legally prescribed way of settling the dispute without the intervention of the court. The omission of the plaintiff to file a request to the Ministry of Justice may, however, have some other repercussions on the process, for example, the right of the applicant to compensation for litigation costs if the respondent admits the claim and others.'

### 5.6. The costs of filing the Request – are they recoverable?

Many decisions of the Supreme Court relate to the question of whether a potential litigant has the right to compensation for expenses in the event that the Republic of Croatia, after the submission of a Request, voluntarily fulfils its obligation. The Supreme Court has held that a potential litigant has the right to reimbursement of costs because the Request is a procedural precondition. Thus, the Supreme Court stated in one of its decisions (judgment No. Rev 771/09 of 26 August 2009): 'In this case the revision sets two legal issues:

- First, whether a party who has filed the Request has the right to compensation for costs of legal representation by a lawyer when the Republic of Croatia, after the submission of the Request, fulfils an obligation voluntarily and does not file the claim?
- Second, is the party that filed the Request entitled to the reimbursement of these costs in the case when the Request is not a procedural precondition, and the party was not obliged to submit it?

About the first legal issue, it should be said that the party is entitled to reimbursement of the costs of the Request in a case when a party can acquire its rights only by filing a claim. It is not important whether the Republic of Croatia voluntarily fulfilled the obligation after the Request or after filing the claim. In the first case, the party will achieve its right to reimbursement of those expenses through an independent suit before a court (before which a claimant must file the Request for payment of the cost). In the other case, the party will obtain the expenses of the Request as part of the litigation costs in accordance with Art. 155 and Art. 151 of the Civil Procedure Act. According to the provision of Art. 186a of the Civil Procedure Act, a person who intends to file a lawsuit against Croatia first of all has to submit the Request, otherwise the court shall dismiss the lawsuit against

Croatia. Therefore, the Request is a procedural precondition that has to be fulfilled before filing a lawsuit before a court of law. Otherwise, the party is not entitled to judicial protection, and cannot even try to exercise its right to which it is entitled by its belief.

The answer to the second legal question should draw on what has previously been stated, and keep in mind that Art. 186a of the Civil Procedure Act applies only to cases where the parties can obtain their rights in a civil lawsuit which means that the Request is a procedural precondition for seeking judicial protection. In all other cases, it is necessary to assess whether the Request is a condition for the realisation of the right before the civil court. In this case, the applicant filed the Request asking that the State as an employer pays taxes, local taxes and mandatory contributions to the appropriate accounts of the competent authorities (Ministry of Finance - Tax Authority). The amount was determined by a court settlement concluded before the Municipal Court in Varazdin. Thus, the plaintiff in fact in his Request asked for the difference between net and gross wages after the court settlement. The plaintiff was able to accomplish that in administrative proceedings before the tax authorities. The Request is not a procedural precondition for administrative proceedings before the tax authorities. Consequently, Art. 186a of the Civil Procedure Act does not apply to the plaintiff's legal situation and the plaintiff is, for that reason, not entitled to reimbursement of the costs of the Request.'

### 5.7. The impact of the filing of the Request to the running of the statute of limitation

The issue of the statute of limitations in terms of Article 186a of the Civil Procedure Act is particularly interesting because the Civil Procedure Act 2003 provided that filing a Request interrupts the statute of limitations, and the amendments to the Civil Procedure Act in 2008, which came into force on 1 October 2008, stipulated that filing a Request suspends the statute of limitations. Also, to the open question of interpretation of this provision in light of the limitation periods for bringing an action in individual cases, this has not influenced the statute of limitations in substantive law.[44] The Supreme Court, in its decision no. Revr 341/09 of 11 November 2009, stated: 'In this case it is not disputed that plaintiffs, as officials of the Ministry of Interior - the Police Administration of Vukovar,

[44] The Civil Obligations Act in Art. 1061 stipulates that the employer shall be liable for damage caused to a third party by an employee at work or in relation to work unless it has been proven that there are grounds for exclusion of liability of employees. The employer who has redressed the damages caused to the injured party shall be entitled to ask for compensation for the costs of repair of damages from the employee if the employee has caused the damages intentionally or due to gross negligence, but this right of the employer has to be exercised within 6 months from the day of redress. The cited article raised a question. Does the State as an employer have the deadline (of 6 months) for bringing a lawsuit and could the State be exempt from the obligation to file a Request because of the deadline for bringing a claim before the competent court of law? Although there is no case law on this issue, I think that the State should in these cases file a Request because the stated article does not prescribe the preclusive deadline for filing lawsuits. This opinion also comes from the fact that the court will determine that the State has filed the complaint after the deadline only if the respondent objects that the State's lawsuit has been submitted after the above-mentioned time limit. Furthermore, the Court will not dismiss a lawsuit filed after that deadline without deciding on its merits (as is the case when the parties omit to submit the Request), but it will reject it as unfounded.

during June 2004 worked overtime, and that the respondent did not pay for the overtime. (...) The salary for June 2004 was paid on 2 July 2004. The plaintiffs filed a Request on 10 July 2007 to the Municipal State Attorney Office in Vinkovci, and the Municipal State Attorney Office in Vinkovci rejected their Request on 10 October 2007. The plaintiffs filed their claim on 25 July 2008, before the amendments to the Civil Procedure Act in 2008. By submitting the Request to the Municipal State Attorney Office in Vinkovci on 10 July 2007, the statute of limitation had been interrupted. It started to run again after the answer to the Request. Since the plaintiffs filed the lawsuit before the expiration of three years after the statute of limitation had been interrupted, their claim is not out of date.'

## 6. CONCLUSION

The Request to settle the dispute amicably, from its introduction in 2003 until today, is the subject of debate. It is not usual to impose such a general obligation which depends on the party in the dispute (in this case the Republic of Croatia) but rather on all parties in certain types of disputes (e.g., employment disputes, divorce disputes). Some disadvantages of this mechanism are apparent at first glance. It is obvious that the Request, despite the changes in 2008, disrupts the procedural balance. It puts in a less favourable position the potential plaintiff by delaying his right to file a lawsuit for three months, which represents a form of denial of justice for this period. Furthermore, it is evident that the parties have additional costs because they have to take one extra procedural action. For all these reasons, plaintiffs who intend to file a lawsuit against Croatia might be considered discriminated against compared to other plaintiffs who do not have such an obligation. Hence, one might argue that the Request should be challenged before the Constitutional Court of the Republic of Croatia and deemed unconstitutional.

One of the not so obvious negative sides of the Request is that parties can at any moment, without consequences, terminate negotiations. As mentioned before, the opposing party in such cases has no means to force the claimant to sign the settlement even when the parties previously agreed on the everything including the amount of the settlement.

Despite all the above-mentioned negative sides of the Request, an analysis of the case law, the dual role of the competent state attorney office, statistical analysis and an analysis of this mechanism in relation to all the provisions and principles of the Civil Procedure Act prove that its positive effects are far reaching, particularly in view of the recent changes to the Civil Procedure Act in 2013. The positive impact of the Request significantly exceeds the negative impacts and even leads to the positive discrimination of the respondent who received the Request to the 'ordinary' respondents who are involved in the procedure where there is no obligation to file the Request.

It is evident that, even if the purpose of introducing the Request in the Croatian legal system was 'daunting' potential plaintiffs, such a goal was not and could not be achieved. Croatia is a democratic country where human rights, including the right to legal protection

before the court, are respected. Consequently, the Request cannot be an obstacle to access the court, but it represents a great help in relieving the courts of litigations. It reduces the costs incurred by the parties and it allows the parties, before filing a lawsuit, to reconsider their claim from the angle of their opponents or to resolve their dispute with the State in an amicable way by signing an enforceable settlement out of court. In this respect the role of the deputies in the competent state attorney office, as argued before, is prevalent.

As mentioned above, the positive effects of the Request were highlighted by recent amendments to the Civil Procedure Act in 2013 which affected the establishment of the facts. In small claims disputes, the establishment of the facts corresponds to the facts set out in the claim and the statement of defence. In other cases, it corresponds to the conclusion of the preliminary procedure. The preliminary procedure precedes the main hearing, and usually ends with a preparatory hearing at which parties present facts on which they found their case and propose evidence. The Request puts the respondent in a more favourable position compared to 'ordinary' respondents in cases where there is no obligation to submit a Request because he has three months to prepare a statement of defence and collect evidence.

Since the Request gives the respondent enough time to prepare a statement of defence and obtain all relevant evidence, it indirectly helps parties, or at least the respondent, to at least strive to establish the material truth in the court procedure. Furthermore, it helps not only in the protection of the right to a fair trial but also in the concentration of the court process, and thereby reduces costs.

The fact that in the analysed year, 2012, state attorney offices reached a settlement in 1,538 cases valued at a total of HRK 247,423,000.00 (approximately $36,960,397.96), out of which the State settled in the amount of HRK 196,278,000.00 (approximately $29,320,601.52), and other persons as applicants settled for HRK 51,145,000.00 (approximately $7,640,194.85), proves the importance of the Request.

To conclude, the amendments to the Civil Procedure Act in 2008, which introduced the obligation of the State to submit a Request before filing a lawsuit, restored procedural balance. Until the end of 2014, state attorney offices concluded a settlement in 9,161 cases with a total value of HRK 809,877,205.61 (approximately $120,981,907.42)[45] which thus, with the above-mentioned arguments, fully justifies the introduction and further application of the Request.

[45] The Report of the State Attorney General of the Republic of Croatia for 2014, source: http://www.dorh.hr/Default.aspx?sec=645, accessed 22 June 2015.

Sažetak

**ANALIZA ZAHTJEVA ZA MIRNO RJEŠENJE SPORA PREMA ZAKONU O PARNIČNOM POSTUPKU**

Iako zahtjev za mirno rješenje spora (Zahtjev) može izgledati neinteresantno širem auditoriju jer je riječ o instrumentu koji se u ovomu obliku javlja samo u hrvatskomu pravu, taj je institut značajan zbog više razloga. Obveza podnošenja Zahtjeva predstavlja oblik alternativnog načina rješenja spora jer stranke imaju mogućnost riješiti spor izvan suda. Zahtjev kao institut je interesantan i zbog dvojne uloge nadležnog državnog odvjetništva koje, kao nezavisno pravosudno tijelo, djeluje i kao zastupnik po zakonu države i kao arbitar između stranaka.

Obveza podnošenja zahtjeva za mirno rješenje spora pozitivna je procesna pretpostavka propisana Zakonom o parničnom postupku. Riječ je o općoj obvezi koja ne ovisi o vrsti spora već o vrsti stranaka u sporu. Svaka fizička ili pravna osoba koja namjerava podnijeti tužbu protiv Republike Hrvatske mora podnijeti zahtjev za mirno rješenje spora, a to se primjenjuje *mutatis mutandis* i na državu.

Obveza podnošenja zahtjeva za mirno rješenje spora narušava procesnu ravnotežu te stavlja u nepovoljniji položaj tužitelja koji mora čekati do tri mjeseca dulje od „običnog" tužitelja koji nema obvezu podnijeti Zahtjev kako bi podnio tužbu. Pa ipak, analiza Zakona o parničnom postupku, statistička analiza kao i analiza sudske prakse pokazuje da su pozitivni učinci Zahtjeva daleko značajniji od negativnih.

Konačno, članak se bavi i učinkom Zahtjeva na ulogu državnog odvjetništva. Zamjenici u nadležnom državnom odvjetništvu kao nezavisni pravosudni dužnosnici djeluju slično arbitrima i miriteljima tijekom ove faze postupka.

*Ključne riječi: Zahtjev za mirno rješenje spora, alternativni način rješavanja sporova, mirenje, arbitraža, pozitivna procesna pretpostavka*

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