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**Collective Redress
in CEE & SEE**

Serbia

Wolf Theiss

a) Current collective redress regime

- **What forms of collective redress are available in Serbia?**

A collective redress mechanism as provided for in the Collective Actions Directive (EU) 2020/1828 has not yet been implemented in the Serbian legal system. Nevertheless, the collective redress rules contained in the Serbian Consumer Protection Act 2021 – aimed at ceasing and prohibiting infringements harmful to the collective consumer interest – are largely compliant with the now-repealed Directive 2009/22/EC. Administrative proceedings can be initiated against tortfeasors in the form of “proceedings for protection of the collective consumer interest”, conducted exclusively before the Serbian Ministry of Internal and External Trade (the “**Ministry of Trade**”).

While the Serbian Code of Civil Procedure 2011 contained rules on specific court proceedings for collective redress (*i.e.* proceedings initiated by collective actions), such provisions were rendered unconstitutional in 2013 by the Serbian Constitutional Court.

Finally, aside from the administrative proceedings for collective redress conducted before the Ministry of Trade, it is also possible to consolidate multiple claims into a single court proceedings (*suparničarstvo*) under the Serbian Code of Civil Procedure in the following cases: (i) the claimants share a legal interest in the subject matter of the dispute or their rights or obligations arise from the same factual and legal basis; (ii) the subject matter of the dispute involves similar claims or obligations that are based on substantially similar factual and legal grounds and the same court has jurisdiction over each such claim and defendant; or (iii) in other cases specifically prescribed in the law.

b) Key features of collective redress in Serbia

- **Is collective redress available in all areas of law or only in certain sectors?**

Under Serbian law, collective redress is currently limited to consumer protection (*i.e.* the administrative regime for protection of the collective consumer interest). Legal entities do not qualify as consumers and collective redress is not available to consumers of financial services.

The consolidation of proceedings under the Serbian Code of Civil Procedure is feasible in all areas of law, provided that the procedural requirements for such consolidation are met.

- **Who is entitled to bring an action (e.g. individuals, groups, qualified entities)?**

Under the Serbian Consumer Protection Act, proceedings for protection of the collective consumer interest may be instigated by the Ministry of Trade on its own initiative or by request of a qualified entity registered with the Ministry (*i.e.* associations and unions responsible for educating, counselling and providing legal assistance to consumers, conducting research in the area of consumer protection and quality control, *etc.*).

The Ministry of Trade instigates these proceedings if there are indications that an act or omission by a company, including the use of an unfair contractual provision, endangers or threatens to endanger the collective consumer interest. In that respect, while individual consumers cannot directly instigate said procedure, they may still submit initiatives for its instigation.

- **Which mechanism applies – opt-in, opt-out or both?**

The Serbian Consumer Protection Act does not define the collective redress regime under that Act as either an opt-in or opt-out mechanism. The rights and interests of consumers are protected without their active involvement in the proceedings. However, these proceedings do not prevent consumers from claiming damages individually before the competent court in “consumer disputes” (*potrošački sporovi*), which may run in parallel to the pending administrative proceedings.

- **What are the requirements to bring an action? Is there a minimum claims threshold?**

There is no minimum threshold under the Serbian Consumer Protection Act.

Collective redress under the Serbian Consumer Protection Act is triggered by the infringement of a collective consumer interest. Such an infringement exists if: (i) a company violates the rights of at least ten consumers guaranteed under the Act, either through identical actions or in an identical manner; or (ii) unfair provisions are contracted in consumer contracts.

Where the rights of fewer than ten consumers are violated, an infringement of the collective consumer interest is also be deemed to exist if the Ministry of Trade determines the existence of said infringement, particularly taking into account the duration and frequency of the trader’s actions and whether those actions have adverse effects on each consumer in the situation at hand.

- **Which remedies are available (e.g. monetary compensation, injunctive measures, redress measures)?**

Upon determining an infringement of the collective consumer interest, the Ministry of Trade may impose certain protective measures against the company, which may include an obligation to: (i) stop the behaviour that endangers the collective consumer interest and refrain from employing that behaviour in future; (ii) remedy the infringement determined; and (iii) immediately cease contracting unfair contractual provisions.

If there is a risk of adverse consequences affecting the rights and interests of consumers, the Ministry of Trade may also, upon request of the relevant consumer association, impose certain interim measures aimed at eliminating or preventing the occurrence of such adverse consequences.

In addition, the company against whom the collective redress proceedings have been instigated may also be liable for a misdemeanour if: (i) an infringement of the collective consumer interest is determined; and/or (ii) it breaches any protective measures imposed by the Ministry of Trade. Such liability leads to a monetary fine between RSD 300,000 (approx. EUR 2,500) and RSD 2,000,000 (approx. EUR 17,000).

Claims for damages cannot be asserted under this regime. Therefore, consumers must instigate individual civil court proceedings (i.e. consumer disputes) to claim any damages against the company that breached the relevant legal provisions.

- **In claims for damages, does loss need to be collectively established or is individual proof required?**

While a decision by the Ministry of Trade determining an infringement of the collective consumer interest may be referenced by consumers in civil court proceedings to support their claim that their interests were indeed violated, the consideration of such a claim and the determination of the amount of any damage sustained as a result of the infringement would need to be proven before the competent court in those proceedings.

- **What types of damages are recoverable (e.g. economic loss, damage to property)?**

Under Serbian law, an injured party is generally entitled to claim both material and immaterial damages. Material damage may take the form of actual damage or loss of profits, while immaterial damage includes physical or psychological pain or fear suffered.

- **How are damages quantified? On what basis are damages divided among class members?**

As no damages can be awarded under the collective redress regime conducted through administrative proceedings, no specific rules regulating the quantification and/or division of such damages exist under Serbian law. In civil court proceedings, each claimant may be awarded compensation corresponding to the amount of the damage proven to be sustained by the claimant.

- **What is the settlement structure, if any?**

No standard settlement framework exists for the collective redress regime under the Serbian Consumer Protection Act. However, the Act provides that a company against which proceedings are conducted may, during the course of proceedings, propose to undertake certain obligations to remedy the infringement (*korektivna izjava*). The timely fulfilment of those obligations would lead to the suspension of the administrative proceedings against the company.

On the other hand, settlements can be reached with individual consumers both extrajudicially or before the competent court during the course of civil court proceedings.

c) Collective redress proceedings

- **How are court proceedings managed? Are there any typical procedures used in the context of collective redress?**

Administrative collective redress proceedings are conducted by the Ministry of Trade, which simultaneously collects evidence relating to the infringement of the collective consumer interest by a trader or association of traders. However, these proceedings retain certain adversarial elements when instigated on the request of a registered consumer association, which is then considered a party to the proceedings and may exercise certain procedural rights (e.g. propose evidence).

In addition to the collective redress proceedings before the Ministry of Trade, multiple individual claims can also be consolidated into a single court proceedings (*suparničarstvo*) in accordance with the Serbian Code of Civil Procedure, subject to the legal requirements for the consolidation of claims being met.

- **Is there a deadline by which claimholders must join proceedings?**

Under the Serbian Consumer Protection Act, only a registered consumer association is entitled to represent consumer interests in proceedings to determine the existence of an infringement of the collective consumer interest. Individual consumers cannot directly take part in such proceedings.

With respect to individual court proceedings pursued under the Serbian Code of Civil Procedure, it is a general rule that a new claimant may join the existing claimant(s) up to and until the moment the main hearing phase is concluded in the proceedings, on condition that they accept the then-current state of those proceedings.

- **Are there any time limits on initiating court proceedings?**

The Serbian Consumer Protection Act does not provide any specific deadline for initiating collective redress proceedings under that Act.

As regards the instigation of individual court proceedings, claims for damages must be lodged within three years of the damage and the tortfeasor becoming known, but no later than five years after the date the damage occurred. However, the Serbian Consumer Protection Act prescribes a longer limitation period if the damage was caused by a defective product, with claims for damages becoming time-barred after ten years from the date the manufacturer put the defective product on the market.

- **Is pre-trial discovery available?**

The Serbian legal system does not define the legal concept of pre-trial discovery as provided for in common law.

However, evidence can be secured and scrutinised prior to the instigation of both administrative and civil court proceedings under the Serbian legal framework where there is a justified fear (*i.e.* danger) that certain evidence may become unavailable or difficult to examine at a later date.

d) **Costs and funding of collective actions**

- **Is there a rule as to who has to bear the court fees / legal fees? Does the “loser pays” principle apply?**

The “loser pays” principle generally applies in both administrative proceedings for protection of the collective consumer interest, as well as in individual court proceedings for damages, with the losing party required, upon the request of the prevailing party, to reimburse any

costs sustained by the prevailing party during the course of the proceedings. If the parties are only partially successful, the costs are divided between them on a *pro rata* basis. However, in individual court proceedings, the court may also order each party to bear its own costs related to the proceedings.

Attorneys' fees are calculated on the basis of the Serbian Attorney Tariff on Fees and Expenses, whereas administrative and court fees are calculated on the basis of the Serbian Administrative Fees Act. In consumer disputes, consumers are exempt from court fees for actions and judgments where the value of the dispute does not exceed RSD 500,000 (approx. EUR 4,250).

- **How are the costs of proceedings shared among class members?**

In civil court proceedings, parties acting on the same side (*suparničari*) bear the procedural costs equally. Where there is a significant difference between the parties' shares of the dispute, the court may order the costs to be borne on a *pro rata* basis. If the parties acting on the same side are found to be jointly and severally liable *in meritum* towards the other party in the dispute, they will also be jointly and severally liable for the procedural costs.

- **Is third-party litigation funding permitted in Serbia?**

Serbian law does not expressly regulate third-party litigation funding and there is no precedent in case law that would resolve the ongoing debate as to whether such a mechanism would be permissible.

- **Are there any restrictions on third-party litigation funding?**

While no specific restrictions are provided under Serbian law, the general permissibility of third-party litigation funding, as well as its scope and mechanism, are still the subject of broad debate in Serbia.

- **Are contingency fees permitted in Serbia?**

Contingency fee arrangements between clients and attorneys are not permitted. However, it is possible to negotiate a separate success fee, in addition to the fee determined based on the Serbian Attorney Tariff on Fees and Expenses, in proportion to (*i.e.* as a percentage of) the success achieved in the proceedings. However, that percentage must not exceed 30%.

e) Jurisdictional implications

- **Are there any limitations on cross-border collective actions?**

The Serbian Consumer Protection Act and its provisions regulating the procedure for protection of the collective consumer interest apply only to consumer-company relations in the Serbian market (excluding those related to financial services). The procedure is under the exclusive jurisdiction of the Ministry of Trade.

- **Can claims be brought by residents of other jurisdictions?**

The instigation of collective redress proceedings under the Serbian Consumer Protection Act may only be requested by a registered consumer association. Therefore, these proceedings cannot be instigated by individual consumers, regardless of their place of residence.

As regards civil court proceedings, non-residents may claim damages before Serbian courts where the conditions are met to establish the jurisdiction of the Serbian courts (e.g. the defendant has its registered seat in Serbia, etc.).

f) Developments and reforms in collective redress

- **Are there any expected developments / reforms in this area?**

Ever since it was removed by the Serbian Constitutional Court in 2013, and especially due to the recent rise in collective action cases before the Serbian courts over the course of the last decade, there have been requests for the reintroduction of the judicial procedure for collective redress (*i.e.* collective actions) into the Serbian legal framework.

In addition, bearing in mind that Serbia, as an EU candidate country, is working to harmonise its national laws with EU legislation, it is reasonable to expect certain reforms in this area, especially considering that EU member states are already in the process of transposing the provisions of the Collective Actions Directive (EU) 2020/1828 into their national legislations.

g) Risk assessment

- **How frequently are collective actions brought each year and in what areas are they most common?**

There are no published annual statistics on the number of proceedings for protection of the collective consumer interest instigated before the Ministry of Trade. However, sources indicate that, in practice, this form of collective redress has become more common, with the adoption of 25 decisions determining an infringement of the collective consumer interest between 2015 and 2021, mostly against companies that provide services of general economic interest (e.g. telecommunication companies).

- **Based on the information provided above, is the risk to companies of facing collective actions high / medium / low?**

Medium risk.

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