PHENOMENON OF MASS CLAIMS

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“The phenomenon of mass claims” – Research

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All terms used in this document in the masculine grammatical gender should be understood as referring to persons of both the male and the female sex.

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I Preface

For a number of years now, the Serbian judiciary has been burdened with a large number of lawsuits that have the same or substantially similar requests and which are called mass claims (in Serbian: *masovne tužbe*) and mass lawsuits (in Serbian: *masovne parnice*). In professional and everyday Serbian colloquial speech, they are called *masovke.* Adequate expression in common law system for these proceedings is mass tort claims, but as continental law system does not have torts, we will use expressions like mass claims and mass lawsuits to address this phenomenon.

Due to their nature and characteristics, mass claims are accompanied by a significant number of legal, economic and ethical issues. In this particular case, these issues and characteristics are examined in one of the many types of mass claims – proceedings instituted by natural persons against the National Employment Service (NES) due to the incorrect calculation of unemployment benefits. In order to test the hypotheses regarding the general characteristics of mass claims and to define the characteristics of a specific type of mass lawsuits, as well as to uniformly present the obtained data and their analysis, individual cases were examined, judges were interviewed, and mechanisms to access information of public importance were used. The collected data was the subject of discussion, based on which legal conclusions and recommendations for resolving mass claims were made.

The research was conducted by the team led by Nebojša Stanković, PhD attorney-at-law from Niš. Researchers were Milan Jovanović, judge trainee from Niš, Lazar Jović, legal trainee from Grdelica and Milivoje Zlatković, legal trainee from Vranje. Mr. Stanković is the author of the research.

The field research was conducted during 2020, and the writing of the study was completed in the first quarter of 2021. Logistic support for the research was provided by the Committee for Human Rights Niš (CHRIN) and the coalition Judicial Base South (JBS).

Mihajlo Čolak

II A list of abbreviations

SAI	The State Audit Institution of the Republic of Serbia
Code	The Code of Professional Ethics of Lawyers, *Official gazette of RS*, no. 27/2012
NES	National Employment Service
NES proceedings/ NES cases	Proceedings against NES were instituted based on the opinion that NES did not correctly calculate and pay unemployment benefits, which was why natural persons demanded the compensation for damages before the courts. Part of the disputes also referred to the condemnation claims to order NES to execute the payment in the amount of the awarded damages and the corresponding contributions to the competent funds.
Basic Courts	Jointly: Basic Court in Niš, Basic Court in Leskovac, Basic Court in Vranje
SCC	Supreme Court of Cassation
Act	Employment Act and Unemployment Insurance Act, *Official Gazette of RS*, no. 36/2009, 88/2010, 38/2015, 113/2017 and 113/2017 – other law
CPA	Civil Procedure Act of the Republic of Serbia, *Official Gazette of RS*, no. 72/2011, 49/2013 – decision of CC, 74/2013 – decision of CC, 55/2014, 87/2018 and 18/2020
CPA HR	Act on Amendments to Civil Procedure Act of the Republic of Croatia, NN 70/2019 (July 24, 2019)

III Introduction

Mass claims or mass lawsuits (colloquially in Serbian: *masovke*) are terms used to denote proceedings, i.e., lawsuits whose legal and factual grounds are substantially similar or identical, and which are conducted before the courts in large numbers due to the mass violations of rights.

Regardless of the nature of the litigation itself, i.e., its legal or factual basis, the following can be singled out as common characteristics of these proceedings:

- The proceeding is usually instituted by a natural person.
- As a rule, a plaintiff is represented by an agent from the ranks of attorneys.
- Public entities (the state or its bodies, local self-government units, public companies, organizations or public authorities) or other legal entities appear in the role of the defendant.
- The claim is filed to demand a monetary payment (employment claim, damages, acquisition without grounds) or declaratory relief.
- The benefits of such proceedings that plaintiffs gain are often questionable – the amounts they obtain are often negligible, while attorney's fees far exceed the amounts awarded.
- Moral satisfaction, which is reflected in proving that there has been a violation of a person's right or nullity, is of no importance to many plaintiffs.
- These proceedings become massive due to the nature, position, jurisdiction or activity of defendant entities, and this entails legal relationships with a large number of persons.
- Proceedings are instituted in significant numbers after establishing a proper mechanism for predicting the course and outcome of litigation.
- The institution of proceedings is not excluded even without the "pilot phase"[1], especially in the case when the

[1] "Pilot phase" is the period from the filing of the first claims in a particular type of mass lawsuit to the first and second instance decisions, during which the

risks of a negative outcome are small or the monetary claim is subject to a statute of limitations, which as a rule leads to the non-uniformity of court practice.

- In case litigation is successfully completed, the collection of the principal claim and the costs of the procedure from the defendant is certain, which is the main measure of the purposefulness of filing a claim, i.e., the crucial motive.
- Although the time spent on their conduct is significant, mass claim proceedings are very cost-effective for attorneys, because the technique and method of their conduct is quickly developed.
- The value of the cause of action[2] is in most cases negligible.
- In most cases, the proceeding (if it is not related to employment claims) is conducted according to the rules that apply to litigations of small value[3].

The above-described proceedings emerged in the domestic judicial system in the mid-2000s. During this period, they occupied the attention of a huge number of attorneys from different ranks. In the first place, these were definitely attorneys who appeared as agents of plaintiffs and who considered certain behaviors of the defendants to be incorrect, illegal or abusive, on the basis of which they advised their clients to engage in these proceedings; then those who invested large resources in these proceedings and for which they specialized; who shared their experiences with their

courts' views on a typical lawsuit are examined and the usual course of litigation is observed with the aim to evaluate the purposefulness of filing additional lawsuits and forming a common strategic action plan.

[2] The value of the cause of action is the amount of the claim or damage for which the payment is requested or the determined monetary counter-value of the claim which does not relate to financial claims (e.g., surrender of property or establishing property rights). The value of the cause action is determined by the parties and the court according to the prescribed rules for the purposes of determining the tax liability, determining the lawyer's tariff, deciding on the rules of civil procedure to be followed, determining the right to file a petition for review.

[3] A small value dispute is a dispute in which the claim relates to a financial claim that does not exceed the dinar equivalent of 3,000 euros at the middle exchange rate of the National Bank of Serbia on the day of filing the lawsuit and which is conducted according to simplified litigation rules which imply the absence of a response to the lawsuit and preparatory hearing, the abbreviated content of the minutes, the limited possibility to file an appeal and the restriction of the grounds for appeal, the absence of the possibility to hold a hearing before the second instance court and the absence of the possibility to file a petition for review.

colleagues whether they were directly involved in these proceedings or not. Furthermore, judges at all levels of the judiciary were engaged in conducting these proceedings. Finally, there were state attorneys and their deputies, law graduates who passed the bar exam, or less often, attorneys who represented the defendants in these proceedings.

As already stated, the claims of plaintiffs may be different. In a large number of cases, they refer to unpaid salaries and damages, but other legal grounds may also arise, such as acquisition without grounds. In addition to the condemnation[4], there are also declaratory claims[5], which require proving the violation of the rights of a person or nullity. Rarely do transformational claims[6] occur.

Among the various types of mass claims that occur throughout the country, those that stand out are related to shift and night work, food allowances and leave entitlement of employees of the public company Serbian Railways, and the liability of legal successors after restructuring and changing the status of a company (*Railways*), increased salaries of the members of the Ministry of the Interior Affairs (*Police*), discrimination against war reservists (*Veterans*), overpaid compensation for a child's stay in preschool institutions (*Kindergartens*), discrimination against people who have agriculture insurance (*Agricultural pensions*), compensation for damages to employees of the Administration for Enforcement of Criminal Sanctions, nullity of the provisions of the loan agreement regarding the costs of processing applications (*Processing costs*), inadequate payment of unemployment benefits by the National Employment Service (*nacionalke*). In addition, there are other proceedings that are characteristic only of certain territories or areas.

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[4] A condemnation claim is a request for a conviction for an offence (regarding giving, acting, suffering or omission). Requests for payment of claims or compensation for damages are among the most common condemnation claims.

[5] A declaratory claim is a request for a court to establish that a right or legal relationship exists or does not exist, as well as to establish if there has come to a violation of a person's right. Requests for establishing the nullity of a contract and violation of the right to dignity and reputation are the most common among declaratory claims.

[6] Transformational (constitutive) claim is a request filed before the court to terminate, create or change a certain legal relationship. The lawsuits for contract termination, divorce, annulment of the termination of employment contract or changing a child custody schedule are most common among transformational claims. This type of claim is the rarest among the mass claims.

There are no indications as to the decrease in the intensity of mass claims in the near future. On the contrary, due to the new social and legal circumstances, chances are that there will be an increase in the number of the existing cases, or the mass emergence of some new types of claims. The mass occurrence of certain cases is the reason for scheduling the first hearing in the period of up to two years after filing the lawsuit. One of the reasons for the appearance of new waves of mass claims can certainly be the COVID-19 pandemic, as a result of which a state of emergency was declared in the spring of 2020. The constitutionality and legality of its proclamation as well as the regulations adopted during that period were questionable, which was partly the subject of an assessment by the Constitutional Court. Although the Constitutional Court did not agree to take under consideration the constitutionality of declaring a state of emergency, it asserted that the misdemeanor punishment for non-compliance with the measure of prohibition of movement is unconstitutional due to the constitutional guarantee that prohibits double jeopardy.[7] The Constitutional Court, as well as national and international courts will rule on whether the restrictions on basic human rights and freedoms were in accordance with laws, the Constitution and international documents, and whether they were excessive and led to their nullity. This means that there is a possibility of the emergence of a large number of cases and the emergence of new types of mass lawsuits due to human rights violations that occurred during this period.

[7] The decision of the Constitutional Court of RS No. IUo-45/2020

IV Social context

The root of each individual procedure is the plaintiff's position that the defendant's conduct in the legal transaction was unlawful. In that sense, it is the legitimate right of every individual to file a claim, regardless of the undisputed contribution of each plaintiff to the accumulation i.e., to the increased number of cases, as long as it does not represent an abuse of rights and a plaintiff's intention is not frivolous. However, a large number of proceedings, along with other characteristics, contributes to the emergence of certain problems and phenomena, which is why they deserve special attention in order for the phenomenon of mass lawsuits to be better understood. They can be roughly classified into three categories: (i) legal issues, (ii) economic issues, and (iii) ethical issues of mass lawsuits.

(i) Legal issues

Legal issues include:

- the issue of court workload
- the issue of resolving mass claims disputes
- the issue of (non) uniformity of court practice
- examining the adherence to the principle of a fair trial
- finding suitable mechanisms for the effective resolution of these disputes and providing recommendations in that sense

(ii) Economic issues

Economic issues include:

- analysis of resource consumption (time and money) in conducting mass lawsuits
- analysis of the amount of financial claims whose payment is requested and the amount of costs incurred as a result of the proceedings
- analysis of the adherence to the principle of the cost-effectiveness of a proceeding
- a general overview of the economic impact of conducting mass claims lawsuits on defendants or possibly plaintiffs

(iii) Ethical issues

The basic ethical problem associated with mass lawsuits is the manner in which clients are obtained, which is often informally said to be inadmissibly contrary to the principles of the Attorney's Code of Ethics (Code)[8] on unlawful client acquisition. The abuse of the Code is most often related to: offering legal services, submitting a blank power of attorney, advertising, hiring a mediator, promising outcomes, hiring and / or proposing experts whose position on the disputed issue is known in advance. As it is possible to get answers to only certain ethical questions through the analysis of specific cases or interviews, the research was limited only to them. It is also advisable to consider whether proceedings were conducted before the bodies of the bar associations on this occasion.

[8] *"Official gazette of RS",* no. 27/2012

V Phenomenon of *mass claims* – legal framework

The phenomenon of mass lawsuits in this particular case was considered through cases that, as mentioned earlier, are colloquially called *nacionalke*.

The legal background of these cases is described below.

The Law on Employment and Unemployment Insurance (Law)[9] prescribes a system of compulsory insurance which confers rights in the event of unemployment, especially unemployment benefits and health and pension insurance (Article 64). A person is entitled to cash benefits after the termination of the employment on the grounds provided by the law (Article 67) in case they have been insured for at least 12 months continuously, or with interruptions for the previous 18 months (Article 66).

The monthly amount of the monetary reward is calculated based on the daily cash reward and the number of calendar days in the month for which the right is exercised and the payment is made. The daily cash reward is determined by multiplying the basic rate of the daily cash reward by the personal coefficient. The basic rate of the daily cash reward includes the corresponding contributions for health and pension and disability insurance and amounts to 1,000 dinars. The personal coefficient referred to in paragraph 2 of Article 69 represents the ratio of total salary, i.e., salary compensation, basic insurance allowance and the amount of contracted monetary reward in the last 12 months preceding the month in which the employment was terminated, i.e., insurance and average annual salary per employee paid in the Republic of Serbia according to the last published data of the body responsible for statistics at the time of exercising the right to financial compensation. The monthly amount of cash benefit is determined in proportion to the number of calendar days in the month for which the right is exercised and the cash benefit is paid, provided that it cannot be lower than 22,390 dinars or higher than 51,905 dinars for the entire calendar month (Article 69). The benefit is paid in a

[9] *"Official gazette of RS"*, no. 36/2009, 88/2010, 38/2015, 113/2017 and 113/2017 – other law. Previously valid laws contained identical provisions, with possibly changed monetary amounts.

period of three (3) to twelve (12) months, depending on the length of insurance (Article 72).

According to Article 8 of the Law, the National Employment Service is responsible for unemployment insurance affairs and the realization of unemployment insurance rights.

The law stipulates that, contributions for health and pension and disability insurance are included in the cash benefit and are paid at the expense of the person receiving the cash benefit (Article 78). Article 21 of the Law on Contributions for Compulsory Social Insurance[10] stipulates that the base of contributions for insured persons who receive cash benefits from the funds of the organization responsible for employment, pursuant to the law, is the amount of cash benefit. Pursuant to the same law, the contributors of contributions for compulsory social insurance are persons who receive financial compensation under the law regulating employment and unemployment insurance, while the contributions are paid by the National Employment Service.

At the beginning of 2012, based on the recommendation of the State Audit Institution, which is binding for NES, NES changed the methodology for calculating unemployment benefits which resulted in the reduction of the amount of benefits.

The disputes were initiated based on the claims of plaintiffs – natural persons, that NES did not calculate and pay unemployment benefits pursuant to the Law, which was why they demanded damages before the courts. Part of the disputes also referred to the condemnation claims requesting that NES be ordered to pay the corresponding contributions to the competent funds for the amount of the awarded damage (NES proceedings or NES cases).

Despite the fact that the relationship between the beneficiary and NES in terms of exercising the right in case of unemployment is administrative-legal in itself and, as such, it is subject to instance administrative and administrative-judicial control, the

[10] *"Official gazette of RS"*, no. 84/2004, 61/2005, 62/2006, 5/2009, 52/2011, 101/2011, 7/2012 – 8/2013 – adjusted amount in dinars, 47/2013, 108/2013, 6/2014 – adjusted amount in dinars, 57/2014, 68/2014 – other law, 5/2015 – adjusted amount in dinars, 112/2015, 5/2016 – adjusted amount in dinars, 7/2017 – adjusted amount in dinars, 113/2017, 7/2018 – adjusted amount in dinars, 95/2018, 4/2019 – adjusted amount in dinars, 86/2019 and 5/2020 – adjusted amount in dinars.

predominant position held in practice is that plaintiffs have the right to judicial protection before the courts of general jurisdiction pursuant to Article 35, paragraph 2 of the Constitution of the Republic of Serbia[11] according to which everyone has the right to compensation for material or non-material damage caused by the unlawful or improper work of a state body, public authority, autonomous province body or local self-government unit.

[11] *"Official gazette of RS"*, no. 98/2006

VI Research goal and tasks

Having in mind the number and diversity of mass lawsuits, as well as the fact that this type of proceedings was not the subject of more detailed processing and consideration in the phenomenological and problematic sense, and the fact that there was no reliable, public, detailed and systematized data on their number and impact, the attempt was made to reach concrete observations and conclusions through the research which entailed considering procedure characteristics and questions that arose incidentally as a consequence of their conduct.

Given that the number of types of mass lawsuits is large, it would not be practical to perform the analysis by examining a large number of different types of cases, so the type of mass claims related to compensation proceedings instituted against NES was selected for the purpose of obtaining data. Those proceedings were held because of unlawful calculation of the amount of unemployment benefit, i.e., procedures for the payment of the corresponding contributions for compulsory social insurance. This type of cases is suitable for analysis for several reasons: this category of disputes is one of the most numerous ones among mass claims[12], the decisions made by the courts in these types of cases differed at large especially in the courts of southeastern Serbia; the amounts claimed by plaintiffs varied widely; NES was represented in the proceedings both by attorneys and by their employed lawyers who had passed the bar exam; the proceedings were conducted according to the litigation rules for small claims in which the reasons for filing regular legal remedies were limited and audits were not allowed; in these proceedings, various mechanisms and institutes were used in an attempt to unify court practice (views on controversial legal issues, special audits).

In this sense, the aim of the research was to obtain specific data and information in order to understand and provide answers to legal, economic and ethical issues, and thus provide answers to them.

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[12] According to media sources, 40.000 NES proceedings were held before the courts. https://www.rts.rs/page/stories/sr/story/125/drustvo/2643426/moze-li-nsz-da-trazi-vracanje-naknade.html accessed on April 22, 2020.

In order to achieve these goals, research tasks included accessing court cases, collecting and analyzing data and information on individual cases, obtaining additional aggregate data based on the interviews and the Law on Free Access to Information of Public Importance[13] (on the total number of NES proceedings, number of cases terminated by reaching a decision to approve, the number of cases terminated by reaching a decision to deny, the number of cases that were finalized by a decision to approve, the number of cases that were finalized by a decision to deny, the number of cases in which an extraordinary remedy was announced).

[13] *"Official gazette of RS"*, no. 120/2004, 54/2007, 104/2009 and 36/2010.

VII Research Subject

The research included litigation cases initiated by natural persons against NES for damages due to incorrect calculation of unemployment benefits before the Basic Court in Ni, the Basic Court in Leskovac and the Basic Court in Vranje (basic courts). Data were collected through direct access to the case files, based on the interviews and court responses to requests for access to information of public importance. Additional information on NES cases was collected in other ways, as described in the following section of this Report.

VIII Research Method

The research was conducted through five phases.

During the first phase, relevant regulations were collected and reviewed using the methods of analysis. An analysis of the legal framework is provided in Section V of this Report.

The second phase was conducted in three subphases:

- In the first subphase, requests for access to information of public importance were submitted to the basic courts and other competent institutions that have relevant information, and the obtained data was systematized and processed upon the receipt of the responses to the requests.
- In the second subphase, access to the basic courts was obtained in order to conduct case studies based on the direct research of the presented sample of NES cases to collect information on individual court cases using pre-prepared forms with targeted selection of case data.
- In the third subphase, the interview method which was used had to be modified in accordance with the need to avoid direct contact due to unfavorable epidemiological conditions at the time of their implementation, so that the forms were submitted to and filled directly and personally by the judges who acted in NES cases.

The third phase included the analysis of the collected data, compilation of statistics and drawing conclusions, which are presented in Sections IX and X of the report.

In the fourth phase, proposals were made to improve the situation in the field of mass proceedings.

In the last, fifth phase of the research, a draft report, its revision and a final report were prepared.

The Senior Researcher participated in the first phase.

The condition for the realization of each of the following phases was the cooperation of the basic courts, i.e., their administration and judges, as well as the institutions from which the submission of information of public importance was requested. The author of this Report hereby confirms that, despite the current epidemic, each of the contacted courts and institutions from which

the information was requested expressed understanding and responded to the requests of the project proponent, and thus contributed to its implementation and enabled obtaining the data on which this Report is based.

The second phase was conducted in three subphases.

- In the first subphase, the project proponent addressed the basic courts and other institutions with requests for access to information of public importance; the requests were sent in successive instances and at the intervals necessary for them to provide answers to each request, and with a set number of questions that would allow these bodies to act in a timely, cost-effective and practical manner. These responses were then systematized and processed.
- In the second subphase, after the project proponent had addressed basic courts and agreed on the conditions for the implementation of this part, we had a direct access to NES cases conducted before the basic courts and, at the same time, collected data using questionnaires – 'case study'.
- In the third subphase, following an arrangement with the administration of the basic courts, data were collected using an interview which was directly completed in writing by the judges themselves.

Research time frame

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Ethical Standards of the Research

The report on the research was written without any personal data of the participants in the proceedings, the interviewed judges and other persons whose personal data may be shown in the data which are of interest for the preparation of the Report.

IX Findings

(i) Information of public interest

Acting on behalf of the research team, the project proponent addressed the institutions that may have had information relevant to the subject of the research. All the institutions promptly responded to the requests for information of public importance; however, they did not have all the requested information in all the cases (ex. final or non-final outcome of the procedure), and in some cases collecting information was either difficult or impossible to do due to the amount of work required or due to the features of databases.

All the obtained data and information is presented and analyzed jointly, having in mind that they intercorrelate and need to be compared directly.

During 2013, 4,110 lawsuits were filed against NES in the Republic of Serbia for damages due to the discrepancy in the payment of cash benefits and for damages due to the violation of the right to cash benefits, and, to a lesser extent, due to the late payment of cash benefits and the reduction of old-age pension as a consequence of the reduced cash benefits. In 2013, 266 lawsuits were all filed by employees of two companies against NES for compensation for damages due to the violation of the right to cash benefits.[14]

During 2014, 3,746 lawsuits were filed against NES in the territory of the Republic of Serbia for the payment of the difference in monetary compensation, and NES incurred expenses in the amount of 282,114 thousand dinars for these needs (principal debt, interest, court costs) during this year. 2,182 lawsuits were filed in the area of Branch office Leskovac, 883 lawsuits were filed in the area of Branch office Pirot, while a total of 482 lawsuits were filed in the area of Branch office Niš because of the incorrect or untimely payment of unemployment benefits.[15]

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[14] Report on the audit of final financial statement of the National Employment Service for 2013 and regularity of operations no. 400-100/2014-05-11, pg. 105.

[15] Report on the audit of final financial statement of the National Employment Service for 2014 and regularity of operations no. 400-4965/2015-05/8, pg. 90-92.

On December 31, 2015, NES had a total of 32,143 lawsuits, 7,113 of which were conducted by the Directorate of the National Service, and 25,030 of which were conducted by branch offices. The largest number of them related to the claims of beneficiaries of monetary compensation.[16] During 2015, the National Service incurred expenditures for *Fines and penalties by court decision* in the total amount of 40,128 thousand dinars, while expenditures for *Compensation for injuries or damage caused by state authorities* amounted to 381,099 thousand dinars, 366,479 thousand dinars of which were collected by enforcing a judgement.[17]

On December 31, 2016, NES had a total of 50,396 court disputes, in 40,475 of which it acted as a defendant accused of paying reduced monetary compensation. These disputes were conducted at the branch level. Of the total number of disputes in which NES acted as a defendant, as many as 27% were conducted at the level of Branch office Niš (almost 11,000 proceedings); 13% were conducted at the level of Branch office Prokuplje; 8% were conducted at the level of Branch office Vranje; 6% at the level of Branch office Belgrade; while 4% of the disputes were conducted at the level of Branch office Leskovac.[18]

In 2016, NES reported expenses for *Fines and penalties according to court decisions* in the total amount of 172,044 thousand dinars, while expenses for *Compensation for injuries or damage caused by state bodies* were reported and executed in the total amount of 1,421. 801 thousand dinars, which represents an increase of as much as 1,055,322 thousand dinars when compared to the previous year.[19]

The State Audit Institution of the Republic of Serbia (SAI) drew attention to the fact that NES did not ensure consistent application of the existing control mechanisms[20] that would ensure compliance with the deadlines for voluntary enforcement of final court judgments in which NES was the debtor. This result-

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[16] Report on the audit of final financial statement of the National Employment Service for 2015 and regularity of operations no. 400-69/2016-05/8, pg. 65.

[17] Ibid, pg. 51-52.

[18] Report on the audit of final financial statement of the National Employment Service for 2016 and regularity of operations no. 400-1912/2017-05/6, pg. 75-76.

[19] Ibid, pg. 62.

[20] Internal policies, procedures, instructions, regulations and decisions that manage risk, binding for all employees.

ed in higher expenditures due to the costs of conducting the enforcement procedure and hiring a public enforcement officer. In the tested sample of incurred expenses for the compensation for damages or damage caused by state bodies, the costs of the enforcement procedure amounted to 43%, i.e., 2,717 thousand dinars.[21] SAI stated that NES did not establish control mechanisms that would enable the timely submission of documentation, on the basis of which enforcement was carried out, in order to monitor and identify enforcement creditors, the basis of their claims, the amount of principal debt, interest, litigation and enforcement procedure costs.[22]

Non-compliance with control mechanisms led to the enforcement of other expenses, which included costs, interest and principal debt from court proceedings for damages compensation by state authorities, by blocking accounts in as many as 93% of the cases under enforcement decisions made on the basis of the enforceable titles[23] derived from the litigations conducted due to improper payment of monetary compensation, while only 1% represented the voluntary enforcement of a final court judgment by the branch.[24]

On December 31, 2017, NES was sued in 34,439 proceedings, the largest number of which related to the lawsuits of beneficiaries for monetary compensation. During 2017, most disputes were conducted at the level of Branch office Kragujevac (23%) and at the level of Branch office Belgrade (12%).[25] At the level of Branch office Niš, 7% of the proceedings were conducted, Branch office Vranje 3% of the proceedings, while at the level of Branch office Leskovac 1% of the proceedings were conducted. Other expenses related to fines and penalties based on the court decision and to compensation for injuries or damage caused by state bodies were

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[21] Report on the audit of final financial statement of the National Employment Service for 2016 and regularity of operations no. 400-1912/2017-05/6, pg. 4.

[22] Ibid, pg. 10.

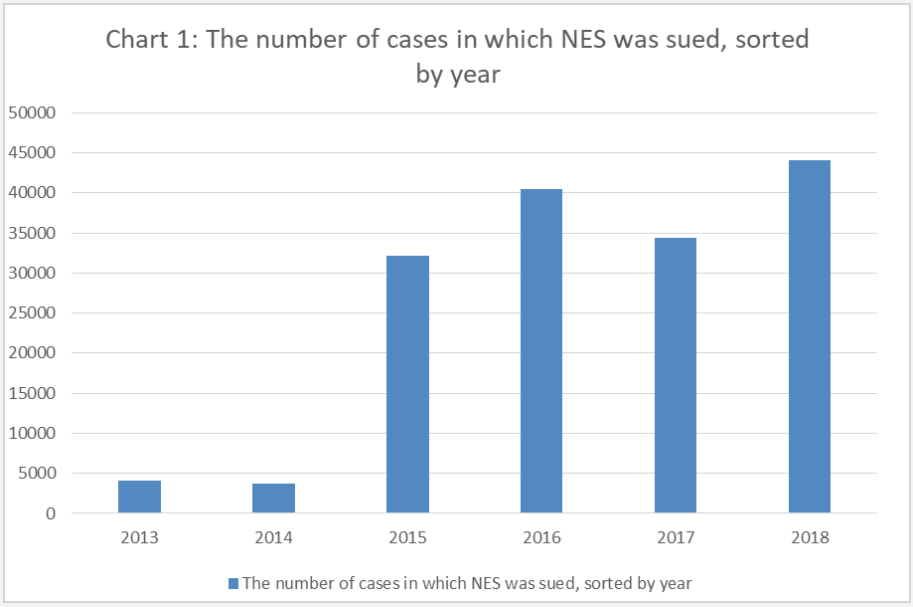
[23] An enforceable title is a judgement or final decision of a court, arbitration or administrative body, judicial or administrative settlement, notarial record or other document of a public-law character in accordance with the law, regarding giving, acting or not acting and which includes an enforceability clause.

[24] Ibid, pg. 27.

[25] Report on the audit of final financial statement of the National Employment Service for 2017 and regularity of operations no. 400-1795/2018-05/6, pg. 88-89.

reduced by 45%, and, in 2017, they amounted to 113,423 thousand dinars, i.e., 758,484 thousand dinars.[26]

On December 31, 2018, NES had a total of 44,020 litigations, 36,190 of which were conducted at the branch level, including 35,698 where they acted as defendants, while 7,716 disputes were conducted at the level of the NES Directorate.[27]



SAI drew attention to the fact that in the audit of the financial statements and regularity of operations for 2017, it was determined that NES did not report liabilities related to the costs of enforceable judicial decisions in the Balance Sheet on December 31, 2017, and thus reported less liabilities for other expenses and accruals in the amount of at least 13,070 thousand dinars. For this reason, the responsible persons were recommended to record liabilities for other expenses related to the costs of enforceable judicial decisions chronologically, orderly and up to date, within the deadlines pursuant to the regulations governing budget accounting, and this was partially implemented.[28]

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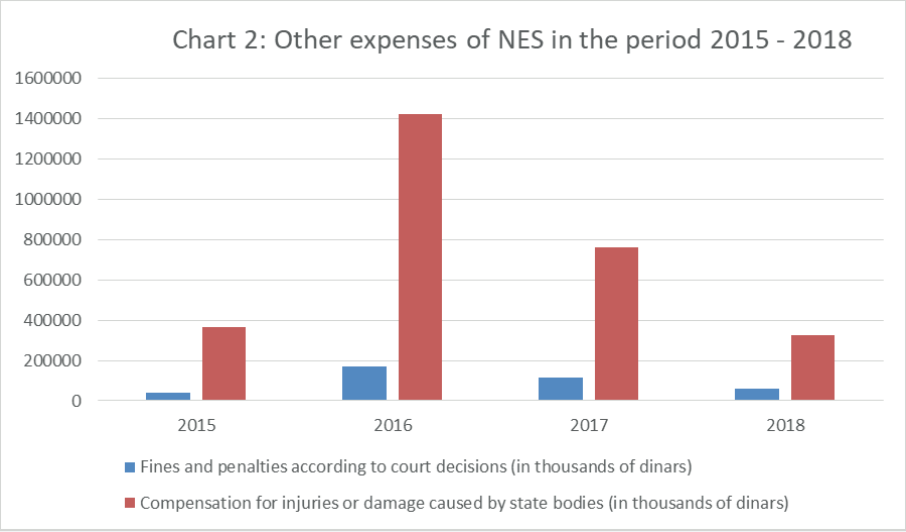
[26] Ibid, pg. 65.

[27] Report on the audit of final financial statement of the National Employment Service, Kragujevac for 2018 no. 400-90/2019-05/8, pg. 54.

[28] Ibid, pg. 51.

In the audit procedure, it was determined that, on December 31, 2018, NES did not include liabilities for other expenses related to the costs of enforceable judicial decisions in the total amount of 16,422 thousand dinars, based on the lawsuits for damages incurred due to reduced cash benefits, lawsuits for reduced contributions for pension and disability insurance and lawsuits for payment of contributions for compulsory social insurance and for damages incurred due to reduced cash benefits. On December 31, 2018, the highest percentage of unrecorded liabilities for other expenses related to the costs of enforceable judicial decisions was noted at Branch office Niš – as much as 85%.[29]

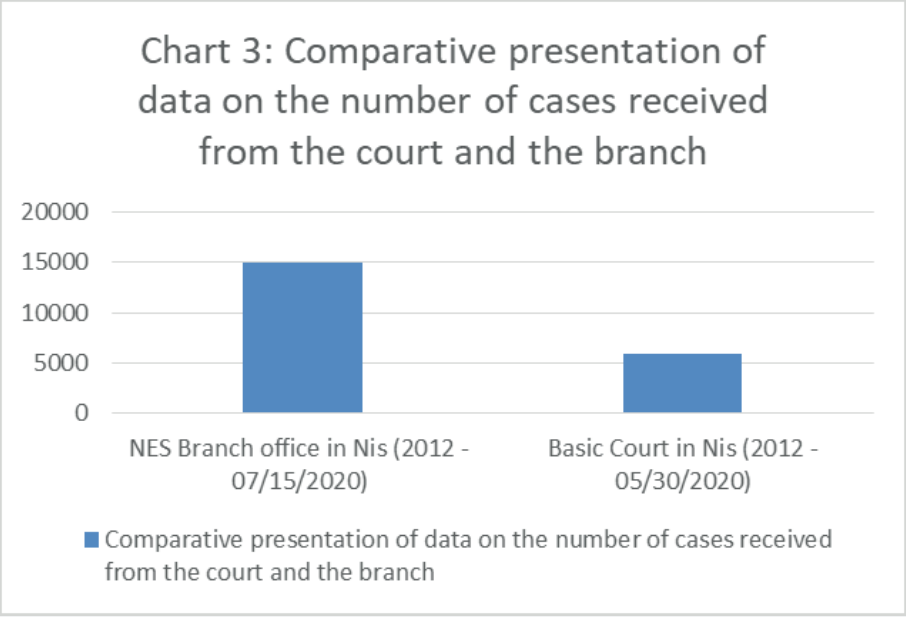


The National Employment Service – Branch office Niš stated in its response to the request for access to information of public importance that 'they have no legal obligation to keep the records of all the data' that was requested, so they submitted the data they had at their disposal. It was stated that 14,940 proceedings were conducted before the Basic Court in Niš against NES in the period from 2012 to July 15, 2020, while the total number of cases in which NES appeared as an enforceable debtor was 8,645. Counter-enforcement was initiated in 7 cases.

On the other hand, the Basic Court in Niš submitted the information that NES – Branch office Niš acted as a defendant in

[29] Ibid.

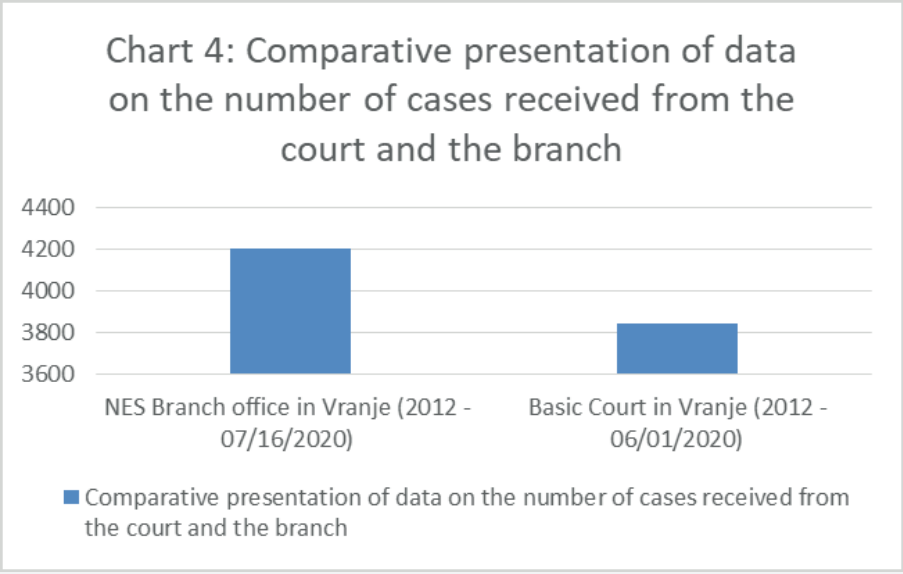
the general litigation in 5,956 cases in the period from January 1, 2012, to May 30, 2020. The total number of cases for the same period, in which NES – Branch office Niš appeared as a defendant for damages incurred due to unlawful work, improper calculation and payment of unemployment benefits is 3,327. The total number of enforcement cases before this court, on the basis of an enforcement document in which the NES – Branch office Niš appeared as the debtor for the stated period, is 206.



According to the submitted information, in the period from January 1, 2012, to July 16, 2020, the NES branch office in Vranje was sued in 4,203 cases, while it appeared as an enforceable debtor in 2,674 cases. No counter-enforcement was initiated.

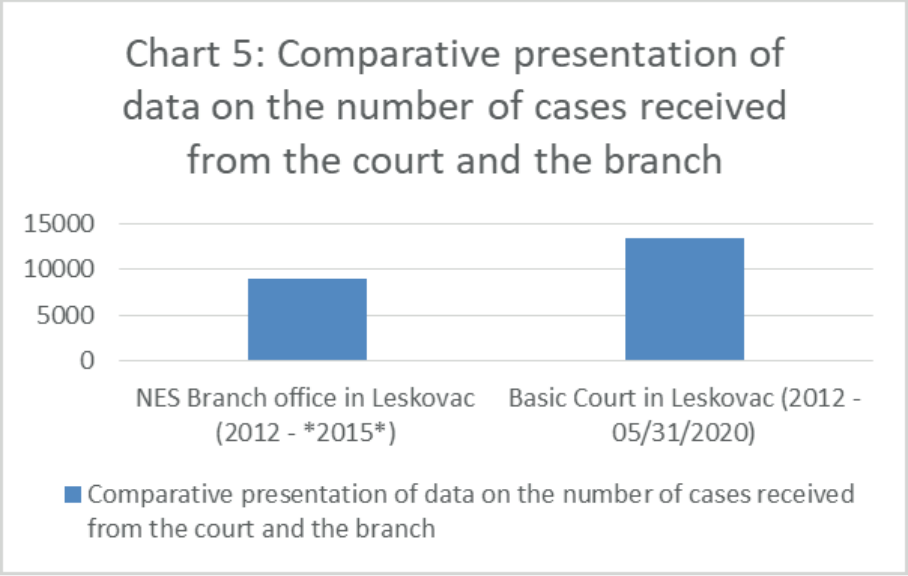
The Basic Court in Vranje submitted the information that NES appeared as a defendant before this court in 3,841 cases in the period from January 1, 2012, to June 1, 2020. The basis of the dispute was compensation for damages in 565 cases, debt in 2,728 cases, and payment in 529 cases. In the stated period, the proceedings in the first instance against NES ended with a decision to approve in 2,995 cases, while the final decision to deny was made in 350 cases. 1,705 cases were completed by a final decision to approve, while 300 cases were completed by a final decision to deny. The audit was applied in five cases in the same period. Among the

cases in which compensation for damages was stated as the basis of the dispute, 1,750 cases were completed by a final decision to approve, while 310 cases were completed by a final decision to deny. NES appeared as an enforceable debtor in 120 cases before this court in the same period.



According to the submitted information, in the period from 2012 to 2015, the NES Branch in Leskovac was sued for the incorrect calculation of unemployment benefits in 8,945 cases, but there is a possibility that the stated figures are incorrect due to the inefficiency since one person was in charge of representing NES as well as writing submissions, appeals, archiving, and in general all the activities related to the ongoing court proceedings.

The Basic Court in Leskovac submitted information according to which 13,417 lawsuits and 1,516 motions for enforcement were received in the period from January 1, 2012, to May 30, 2020, in which NES was sued, i.e., appeared as the enforcement debtor. Among litigation cases, 12,143 cases were completed in the mentioned period, 10,510 of which were final. This court did not have the possibility to provide information regarding the basis of the dispute, as well as regarding the type of decision (decision to approve or deny).



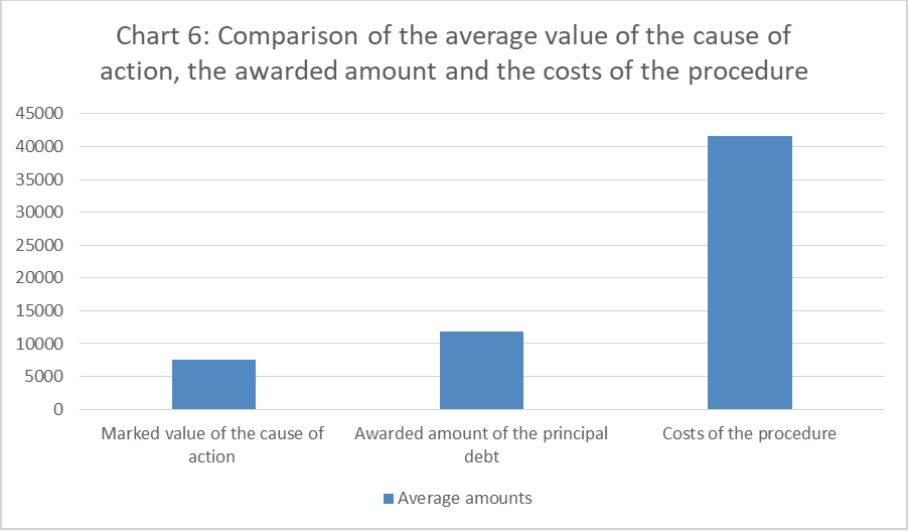
The Niš Bar Association submitted the information that, in the period from January 1, 2013, until December 31, 2019, they received a total of four disciplinary charges related to the work of attorneys in connection with the conduct of attorneys in the cases against NES conducted before the courts in the Republic of Serbia. Two disciplinary charges were filed anonymously, while the submitters were identified for the remaining two. All four disciplinary charges were dismissed by the Acts of the acting disciplinary prosecutor and all the decisions on the dismissal became final. During the same period, no indictment was filed, nor were any proceedings conducted before the Disciplinary Court of the Niš Bar Association related to the breaches of the duty of attorneys or damage to the reputation of the bar in connection with the conduct of attorneys in cases before the courts in the Republic of Serbia that were conducted against NEW for the unlawful calculation of unemployment benefits.

(ii) Case studies

i) Basic Court in Niš

The Basic Court in Niš granted us access to 42 NES cases. The average value of the cause of action indicated in the lawsuit in the mentioned sample was 7,503.28 dinars, while the average award-

ed amount in the case of the approval of the lawsuit was 11,773.64 dinars. The average amount of the awarded costs of the procedure was 41,560.60 dinars. Thus, the awarded amount of costs was more than 3.5 times, on average, higher than the awarded amount of the principal debt.



The fee for the lawsuit was assessed in the average amount of 2,013.00 dinars. Although in most cases the marked value of the cause of action was below 10,000.00 dinars, in which case a lawsuit fee was to be charged in the amount of 1,900.00 dinars, the court assessed the lawsuit fees after passing judgments awarding higher amounts than the determined value of the dispute, so these fees were calculated on the basis of these larger amounts as a rule. There were proofs of payment of the fees in the records in 26 cases. There was no evidence of payment of the fees in the records in 10 cases. In 3 cases, the case file contained a decision on enforcement issued for the purpose of enforcing a judgment for the collection of the court fees. There were no data on the fees in other cases.

The expertise was requested in 31 observed cases, and the fee for the expertise was set in the amounts of 6,000, 8,000, 10,000 or 12,000 dinars, with an average being 6,580.65 dinars. There was evidence of payment for expertise by plaintiffs in 8 cases, while there was no proof of payment in 23 cases. There is no data on the other cases. Among the cases in which there was no evidence

of payment of the expert fee and in which the claim was approved and the costs were awarded, the court awarded the plaintiffs this compensation in 3 cases, while it did not award the compensation regarding the cost of the procedure in 11 cases.

The procedure in the examined cases lasted for 2.2 years on average until their final closing. On average, a total of 5.14 submissions were filed by both parties, with a maximum being 13 submissions. On average, 5.62 hearings were held, with a maximum being 12.

The last first-instance decision was approving in 28 cases and denying in 11. Three cases were discontinued and thus formally closed. The final decision was approving in 25 cases, while it was denying in 14 cases. The appeal was not filed in 5 cases.

In 2 cases, the defendant submitted an extraordinary legal remedy – audit, which was denied in both cases.

The amount of the average awarded costs of the procedure was on average 8.8 times higher than the average awarded amount for the principal debt. The largest amount of costs was as much as 35 times higher than the amount of the approved claim (1,306.62 dinars for the principal debt versus 45,800.00 dinars for the costs of the procedure).

In the examined sample, there was no excessive repetitiveness of the attorneys of the plaintiffs, as well as the experts. Attorney # 1 appeared in 5 cases, while some attorneys appeared up to twice in the remaining cases. In all the cases, the defendant was represented by a lawyer, its employee who had passed the bar exam.

On the other hand, there was more significant but, in relation to the number of observed cases, not too big repetitiveness of the experts engaged in the examined cases: Expert # 1 was engaged in 6 cases, Expert # 2 was engaged in 5 cases, Expert # 3 was engaged in 4 cases, while the remaining experts were engaged in up to 3 cases.

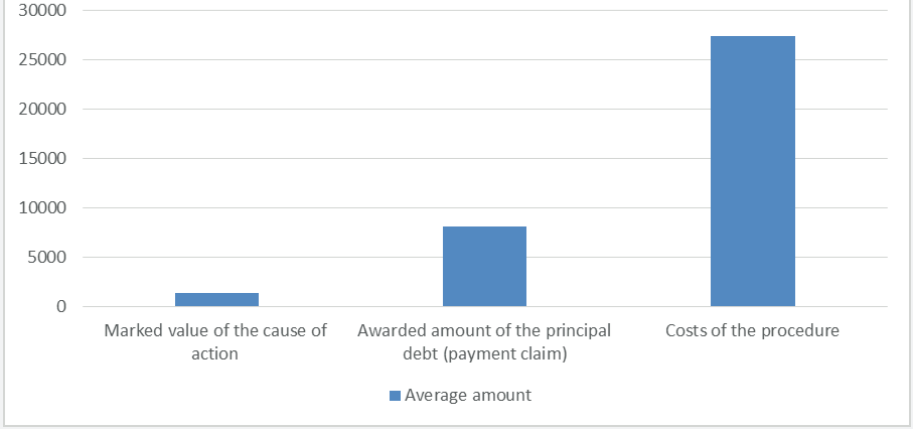
ii) Basic Court in Leskovac

At the Basic Court in Leskovac, 25 NES cases were researched. The average marked value of the dispute was 1,376 dinars. In 15 cases, the claim referred to the payment – compensation given to the plaintiff for the difference due to incorrectly calculated com-

pensation, while in 10 cases it referred to the act – a condemnation claim requesting that NES pay the corresponding contributions to the competent funds. In these cases, a decision by which NES was obliged to pay damages was reached earlier, which speaks in favor of the fact that (at least) in 40% of the examined cases there was a split of claims, i.e., the amount of damages and the request for the payment of social security contributions, the basis of which was the amount of damages itself, were decided upon in separate lawsuits instead of one, which resulted in an unnecessary increase in the number of proceedings and costs of the proceedings, because it is essentially a secondary claim that could have been decided upon simultaneously with the principal one.

When it comes to the request for damages compensation, the average awarded amount was 8,046.60 dinars. The average amount of the procedure costs was 27,430.90 dinars in all the cases. In the proceedings where the request related to the payment of contributions for compulsory social insurance, the amount of awarded costs always amounted to 17,300.00 dinars (which included the costs of the claim preparation and representation at one hearing by attorneys, as well as the costs of the claim and judgement tax). The average amount of the awarded costs of the proceedings was 3.4 times higher than the awarded principal monetary claim, while the awarded costs were up to 86 times higher than the awarded amount (the principal debt in the amount of 201 dinars, the costs of the proceedings in the amount of 17,300 dinars).

Chart 7: Comparison of the average value of the cause of action, the awarded amount and the costs of the procedure



The lawsuit fee in all the cases amounted to 1,900.00 dinars. There was no evidence of the payment of the fee in two cases.

The expertise as evidence was performed in 14 cases, and the fee for the work of the expert was 3,485.60 dinars on average. There was no evidence of the payment of the expert fee in 2 cases in which this alleged cost was not approved as the cost of the procedure in the decision on costs.

The proceedings lasted 0.48 years on average until being formally closed. It is important to note that all the examined proceedings were initiated during 2019 when the practice had already become largely uniform after several years. Furthermore, the class action of a significant number of disputes was a secondary claim – the payment of contributions as the main request, in relation to which the main issue (payment of compensation) was formally decided upon. Deciding on the merits of the claim in these cases was a purely legal issue, which was why the trial was concluded at one main hearing, which also significantly contributed to reducing the duration of these proceedings. Regardless of the short duration of this type of procedure, it must be noted that one should bear in mind the fact that this was a duplicated procedure and claim, which could have been resolved in a lawsuit in which the principal claim had been decided upon.

The average number of filed submissions was 3.2. Three hearings were held on average. Viewed only in relation to the cases that were conducted for the payment of the corresponding contributions for obligatory social insurance, only one hearing was held in 9 out of 10 cases.

The proceeding was completed in the first instance and final decision to approve was reached in 100% of the cases that were the subject of the study.

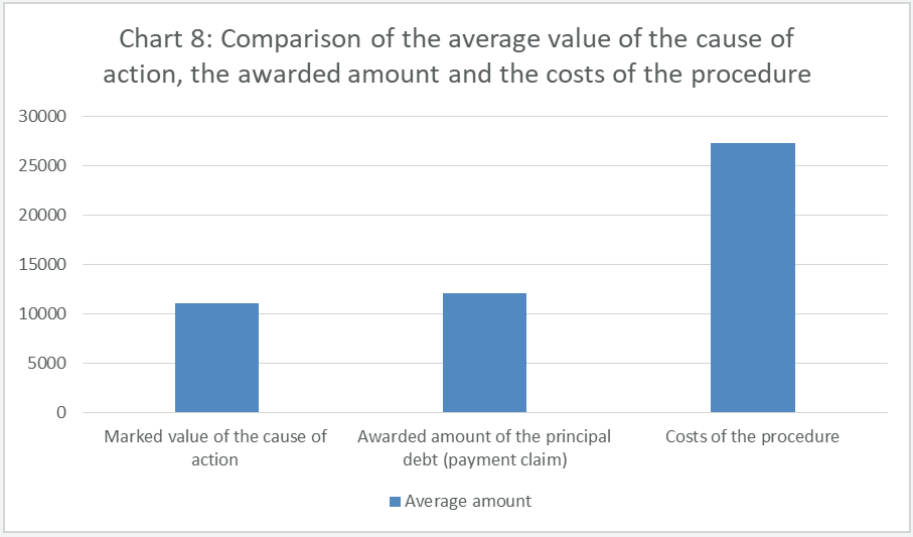
The fact that the appeal was not filed in 16 cases, while it was filed in 9 cases, also contributed to the reduction of the duration of the procedure.

The same attorney represented the plaintiffs in maximum 3 cases. On the other hand, a total of 6 different experts participated in all the proceedings conducted for damages. Expert # 1 participated in a total of 5 cases. Expert # 2 participated in 4 cases. In all the cases, the National Employment Service was represented by its employee who had passed the bar exam.

iii) Basic Court in Vranje

We were granted access to 40 cases at the Basic Court in Vranje.

The average value of the cause of action indicated in the lawsuit was 11,067.70 dinars. In the case of approval of the claim, the average awarded amount for compensation was 12,068,778 dinars, while the average amount of the awarded costs of the procedure was 27,355.5 dinars.



The average amount of the awarded costs of the proceedings was 2.26 times higher than the awarded amount of money as the principal claim. The most significant discrepancy between the amount of the principal claim and awarded costs was as much as 212 times high in favor of the awarded costs of the proceedings (159.00 dinars for the principal debt versus 33,800.00 dinars for the costs of the procedure), while the amount of the difference was single digit in other proceedings.

The average amount of the lawsuit tax was 2,240.60 dinars. In as many as 30 cases (75%) there was no evidence of the tax payment, while a decision on enforcement was made only in one case for the purpose of enforcing a judgement.

The expertise was not performed in only one case. The average fee for the expert amounted to 6,750.00 dinars. There was no evidence of the payment of compensation to the expert in as

many as 28 cases (70%). As for the cases where the claim and the request for reimbursement of the costs of the procedure were approved but there was no evidence of the payment of the expert fee, this cost was awarded to the plaintiffs in 15 cases.

In 19 cases, the proceedings were formally closed by approving the claims, while the proceedings in 5 cases were closed with a decision to deny. In as many as 16 cases, the lawsuits were withdrawn.

The proceedings lasted 2 years on average, 2.2 hearings on average were held, and 3.7 submissions on average were filed.

In the observed cases, Attorney # 1 represented plaintiffs in 24 cases (60%). Other attorneys appeared in a maximum of 3 proceedings. In all the cases, the defendant was represented by a lawyer, its employee who had passed the bar exam.

Expert # 1 examined in as many as 29 cases (72.5%), while Expert # 2 examined in 11 cases. Expert # 1 was appointed by being proposed by the plaintiffs, while Expert # 2 was appointed by being proposed by the defendant (NES). Other experts appeared in other cases up to twice.

(iii) Interview with judges

Bearing in mind that, at the time of the implementation of the interview subphase, there was an epidemic of coronavirus, the judges who had acted in NES cases were not directly interviewed. In accordance with the need to avoid direct contact, the questionnaire forms were submitted to the court administrations, who further distributed them to the judges, after which the completed forms were returned to the project proponent or junior researchers. A sample of the form is shown as an appendix to the Report.

In their answers, the judges pointed out that their work engagement included from 50 up to 1,500 NES cases, an average of 435 cases. According to the judges, the proceedings lasted for an average of 1 year, and an average of 4 hearings were held. The judges unanimously confirmed that it was noticeable that the same attorneys often appeared in the cases as agents of the plaintiffs. The same applies to the experts.

Only 30 percent of the interviewed judges believed that the mechanisms of the court practice uniformity in NES cases were effective, but on the other hand, only 30 percent of the interviewed

judges believed that the introduction of new institutes was necessary in order to unify court practice. The opinion of the judges was that it was necessary for the Supreme Court of Cassation to strictly follow the rules on taking positions on disputable legal issues, especially regarding the deadline for taking a legal position of 60 days from the day of receiving the claims for resolving the disputable legal issue (Article 183, paragraph 3 of Civil Procedure Act [CPA][30]), as well as for all the panels of the second instance court to take an identical legal position. The number of judges who believed that it was necessary to introduce new procedural institutes in order to resolve mass claims more efficiently was approximately the same as of those who did not have this opinion. Judges suggested the necessity to introduce mandatory mediation, or explicitly prohibit the splitting of claims.

The judges freely estimated that the average value of the awarded principal claim to the plaintiff in the case of the claim approval amounted to 9,285.71 dinars, while the average awarded amount of the costs of the procedure was around 33,000.00 dinars. The interviewed judges estimated that the amount awarded for the costs of the proceedings exceeded the amount awarded for the principal debt "at least twice", "several times", or two to five times. Almost 60% of the interviewed judges pointed out that there was no splitting of claims, while the remaining 40% of the interviewed judges stated that there was a splitting of claims, which coincided with the statistics of the courts in which they acted regarding the splitting of litigation.

Judges noticed that the same attorneys often appeared as agents in NES cases, and that only a small number of experts of the same profession acted in the proceedings. This was the response of all the interviewed judges. The judges also pointed out that the payment of the fee for performing the expertise was checked.

Almost 71% of the interviewed judges believed that the plaintiffs were adequately represented in NES proceedings, while almost 14% of the judges believed that this was not the case, or that they were "mostly" adequately represented.

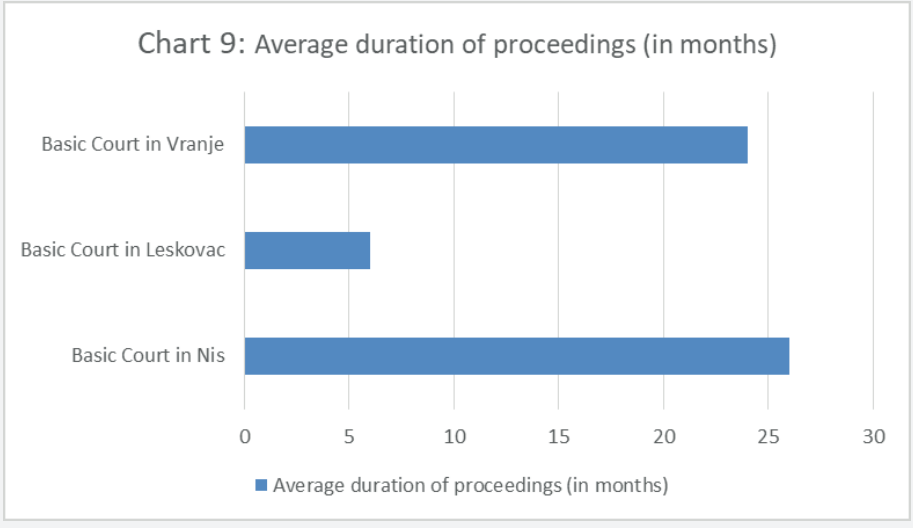
On the other hand, only close to 57 percent of the interviewed judges believed that the defendants were adequately represented, while 43% believed that the defendants were not ade-

[30] "*Official gazette of RS*", no 72/2011, 49/2013 – decision of CC, 74/2013 – decision of CC, 55/2014, 87/2018 and 18/2020.

quately represented, pointing out that the defendant (NES) did not have enough attorneys, that agents did not come to the main hearing, nor did they file submissions, that the defendant was passive during the proceedings, that the defendant had a shortage of manpower.

Almost 43% of the interviewed judges unconditionally believed that the average NES procedure was conducted in accordance with the principles of efficiency and cost-effectiveness. As reasons for their position, they stated the passing of procedural verdicts (due to absence, omission, or on the basis of confession), rejection of the proposal to present evidence by expertise, closing a case at one hearing, passing verdicts outside the main hearing, failure to hold hearings. Of all the interviewed judges, 57% of them believed that the procedure was "mostly" conducted in compliance with the principle of efficiency. They stated the following as reasons for the noncompliance with this principle: different variants of expert findings and opinions, objections to findings and opinions, the need for a statement and uniformity, untimely reaction of the Supreme Court of Cassation in taking a legal position on a disputed legal issue, the decision to discontinue the proceedings until taking a legal position at the request of the parties and the like.

(iv) Comparison chart



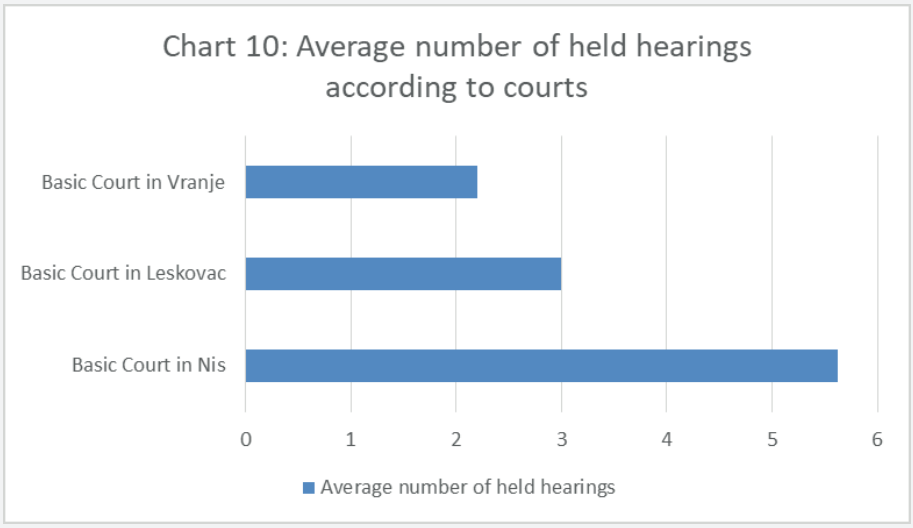


Chart 10: Average number of held hearings according to courts
Basic Court in Vranje
Basic Court in Leskovac
Basic Court in Nis
0
1
2
3
4
5
6
Average number of held hearings

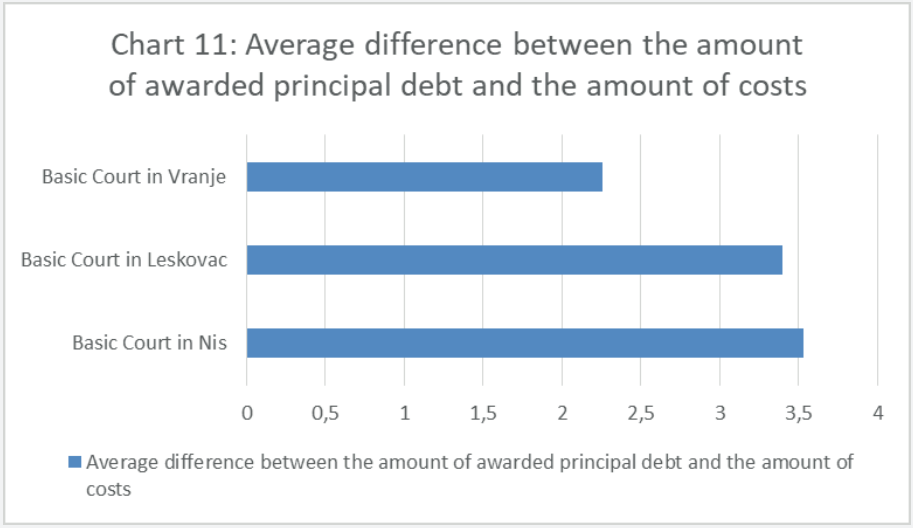


Chart 11: Average difference between the amount of awarded principal debt and the amount of costs
Basic Court in Vranje
Basic Court in Leskovac
Basic Court in Nis
0
0,5
1
1,5
2
2,5
3
3,5
4
Average difference between the amount of awarded principal debt and the amount of costs

X Discussion and Conclusions

Plaintiffs in NES cases are always natural persons. This circumstance stems from the nature of the relationship between NES, as an organization for compulsory social insurance which is directly in charge of employment and exercising rights from unemployment insurance, and individuals who are looking for work or exercising their rights in case of unemployment. The obligation in which NES is the debtor is prescribed by the law, i.e., by its imperative provisions that prescribe the duties of NES regarding the payment of unemployment benefits. The number of proceedings conducted shows a large number of beneficiaries of this benefit.

The National Employment Service, as a legal entity, is a public entity that uses state budget, and its branches also have their budget numbers. NES generates revenues primarily from contributions for compulsory unemployment insurance and from the budget. NES cannot be declared bankrupt, and in case of impossibility to execute payment, the Republic of Serbia, as the founder, is responsible for its obligations. This means that the impossibility to collect payment in case disputes are successfully concluded is practically excluded, which is a circumstance that is crucial for defining the motive for conducting the procedure. As a rule, the lawsuit demanded the payment of a sum of money which in the examined cases did not exceed 50,000.00 dinars, with the lowest amount being 159.00 dinars, and 10,629.00 dinars on average for all the courts according to the examined sample, which means that all the proceedings were conducted in accordance with litigation rules for small claims. This circumstance led to the shortening of the duration of the procedure, primarily due to the exclusion of the statement of defense and the exclusion of certain grounds for appeal.

In certain cases, NES was requested to pay contributions for compulsory social insurance which is, by its nature, a secondary request in relation to the request for payment of unemployment benefits. These claims can, and in accordance with the principle of efficiency and cost-effectiveness, should be addressed simultaneously.

However, claims were split in a significant number of cases before the Basic Court in Leskovac, in a sense that the payment of contributions for compulsory social insurance was not requested at the same time as the compensation for damages, i.e., the pay-

ment of monetary compensation. Such conduct of plaintiffs may be considered to be an abuse of the right to free disposal of the claim. The splitting of claims contributes to the increase in the number of cases before the courts and burdens the parties with additional costs of litigation. As such requests were generally approved, the costs of these proceedings were borne by NES, having in mind that the court did not sanction the abuse of procedural powers and splitting of litigations by denying compensation for litigations to plaintiffs or by merging litigations. On the contrary, although some courts decided that in these cases each party should bear its own costs due to unnecessary splitting of litigation, in order to unify practice, the Supreme Court of Cassation reversed decisions on costs in a special judicial review and returned them to the first instance courts for retrial, with the rationale that the basic criterion that the courts must be guided by when deciding on the costs of the procedure was the success of the litigants in the dispute, as well as by the fact that the defendant NES disputed the claim.[31]

Based on the examined sample, it can be assumed that there was a split in the claims, despite the fact that no repetition of the identity of the plaintiffs in different cases was noticed. As in some lawsuits the payment of due fees was requested in a short period of time, the conclusion that there was a split of lawsuits was made based on the fact that the payment of compensation in a certain number of cases was requested in different periods in different litigations, instead of this being done in one procedure.

There was a significant increase in the number of cases in which NES was sued during 2015 (more than 32,000) compared to year 2014 and 2013 (3,746 i.e., 4,110 proceedings), which supports the thesis that litigations in mass claims, and thus in NES cases, were initiated after the initial, "pilot" phase, during which the practice and expert attitudes were examined, predictability and the usual course of the procedure were determined, and the potential costs and benefits of their management were weighed.

NES cases are characterized by the fact that NES, as the defendant, was not represented by attorneys or defense attorneys, but by the agents from the ranks of law graduates who had passed the bar exam and who were defendant's employees. This resulted in the defendant not being able to claim the costs of the proceed-

[31] Ruling of Supreme Court of Cassation Rev 947/2020 of March 4, 2020.

ings related to the representation in court, which significantly reduced the negative consequences for the plaintiffs in case of losing the court case. Weighing the negative consequences of the potential negative outcome of the dispute, which would be reflected in the time spent on representation, minimum costs of the procedure that the plaintiff would bear in advance (fees and advances for expertise, which, according to the research, were not paid in many cases) or had to compensate the defendant, in relation to the potential benefits of a successfully completed procedure (awarded amounts, primarily for the costs of the procedure, and secondly, for a significantly smaller principal claim), plaintiffs' attorneys gave preference to the potential benefits. It is important to note that in most cases, when conducting mass lawsuits, including NES cases, attorneys did not make any arrangements regarding the payment of fees in accordance with the Tariff on fees and remuneration for attorneys[32], but agreed on "collection from the other party in case of winning the court case", which is the conclusion that was made based on the informal information.

Based on the Decision on the number of judges in the courts[33] at the time of the largest influx of NES cases in the courts (year 2016 and 2017), 1473 judges were scheduled for trials in basic courts in Serbia, while a total of 369 judges were scheduled for trials in higher courts[34], but it should be borne in mind that not all the judges were assigned to work in civil matters, or the so-called "general litigation", a group of cases to which NES cases belong. For example, at the time of writing this report, 25 judges dealt with general civil matters at the Basic Court in Niš, which means that each judge tried in almost 600 NES cases on average, based on the information obtained on the total number of NES cases before this court for the period from 2012 to 2020. Some judges claimed in their interviews that they had worked on 700 or 1,500 NES cases.

The responses of the interviewed judges and the figure of about 40,000 NES cases unequivocally confirm that the courts were significantly burdened with NES cases. The average number of 435 NES cases per judge, as many interviewed judges stated

[32] *"Official gazette of RS",* no*. 121/2012 and 99/2020.*

[33] *"Official gazette of RS"*, no. 88/2015, 6/2016, 11/2016, 48/2016, 73/2016, 104/2016, 24/2017, 31/2017, 54/2017.

[34] Calculations by researchers.

that they had to work on in the period from 2012 to 2020, was a significant limitation and a significant waste of time as a resource which courts and judges in the Republic of Serbia traditionally lack. Instead, this time could have been spent on resolving a larger number of other cases, on resolving urgent cases faster, or on more quality, long-lasting and more detailed consideration of other cases.

An important question that arises in connection with a large number of cases is the way they were resolved. The judges partly considered that NES cases were resolved in compliance with the principle of efficiency, stating that this was possible due to the adoption of procedural judgments, completion of the procedure at one hearing, rejection of evidence, etc. However, several years had passed before the cases were resolved in the described way. The cases in which the lawsuit was filed during 2018 or 2019 were completed in the described manner, with a shorter duration and a smaller number of hearings. Based on the observed cases initiated during 2015 and 2016, a longer duration and holding of a larger number of hearings was noticeable, mainly due to numerous objections to expertise, additions to and variants of findings and opinions. The conclusion is that the passage of time, uniformity of practice, detailed acquaintance with the subtypes of NES cases and key legal and factual issues were necessary in order to achieve such efficiency.

Domestic procedural law prescribes certain solutions that aim at unifying practice and resolving mass claims efficiently. However, the example of NES cases and the views of the interviewed judges confirm that these solutions did not work best in these cases. It should be emphasized that the Supreme Court of Cassation (SCC) had not taken any legal position on the disputed legal issue up to the moment when this report was written in 2020. On the contrary, all the requests for resolving the disputed legal issue submitted by the courts during 2020 were denied. During 2019, one part of the requests was denied, while the Supreme Court of Cassation dismissed a small number of requests.[35] The reasons for the denial were the non-fulfillment of procedural con-

[35] https://vk.sud.rs/sr/solr-search-page/results?page=1&redirected=213&court_type=vks&matter=_none&registrant=_none&subject_number=&date_from%5Bdate%5D=&date_to%5Bdate%5D=&keywords=%D0%A1%D0%9F%D0%9F&phrase=&sorting=by_date_down&results=10&level=0 accessed on October 16, 2020.

ditions for deciding (critical judgement related to the courts that did not follow the procedure for initiating the procedure for resolving the disputed legal issue) and the opinion of SCC that there was no fear of non-uniformity of court practice when a final decision was made by the second instance court,[36] while the reasons for the dismissal were found in the need for the Supreme Court of Cassation to have taken a stand on disputed legal issues earlier in its other decisions. In NES cases, SCC took a position on the disputed legal issue at the session of the Civil Department as late as on January 23, 2017, which was almost five years after filing the first lawsuits in this category of cases.[37]

All that has been stated points to the necessity to consider the need for a possible introduction of new legal institutes in the domestic procedural laws, such as class action suit, collective redress or model case proceedings, or the modification of the existing ones in order to overcome the existing shortcomings.

The concept of *class action suit* is most prevalent in the United States of America. This way of resolving disputes enables plaintiffs to file a lawsuit and conduct the procedure on behalf of a larger or wider group, i.e., "class", whence the institute itself got its name. In other words, it allows courts to conduct proceedings that they would otherwise conduct with considerable difficulty in case each individual member of the class filed its own lawsuit and conducted its own proceedings.[38] In this way, it is possible for the court to completely resolve the dispute and regulate the relationship between the parties, to prevent future lawsuits and the accumulation of identical lawsuits based on the same event and with identical claims against the same party. This, in a way, ensures the elimination of partial injustice, in which case some members of the group succeed in realizing their demands, whereas others fail due to various factors – from not using all legal instruments or errors in the representation to differences in the law enforcement or court practice.

In 1842, the US Supreme Court recognized representative lawsuits with the following rationale: "where there are numer-

[36] Decision of SCC Spp 6/2019 dated December 12, 2019.

[37] Methodology for calculating cash benefits in case of unemployment, Legal understanding of the Civil Department of the Supreme Court of Cassation determined at the session held on January 23, 2017

[38] see Hansberry v. Lee, 311 U.S. 32, 41, 61 S.Ct. 115, 118 (1940)

ous persons having the same interest which makes it impossible, except with great difficulty, to conduct a trial with all of them as parties, the court will allow part of the parties to represent the whole group so that the decision binds everyone equally, as if they all acted as parties before the court".[39] However, it should be emphasized that a class action suit does not only serve to resolve a situation where there are many plaintiffs and it is impossible to conduct the procedure. On the contrary, even then it was noticed that there were several practical needs that were met quite effectively in this way:

- to protect the defendant from inconsistent or unequally awarded obligations,
- to protect the interests of those parties who did not take part in the proceedings before the court,
- to provide a practical and cost-effective way to resolve identical lawsuits,
- as well as to reduce and evenly distribute costs among the parties.[40]

The institute of class action suit was actually recognized in U.S. procedural law after it had been recognized by the Supreme Court. Rule 23 (a) of the Federal Rules of Civil Procedure[41] sets out 4 conditions for handling a class action: 1) the number of class members is such that it is impractical to combine their individual actions, 2) class members' claims are based on the same legal or factual issues; 3) the requests of the representatives of the members of the class are typical for the rest of their class and 4) the proposed representatives will adequately represent and protect the interests of the whole class.

In addition to the aforementioned 4 conditions – number, identity, typicality and adequate representation – Rule 23 (b) prescribes that, alternatively, it is necessary for the court to determine 1) that filing individual lawsuits by or against class members would create a risk of inconsistent adjudication, 2) that a party against which the class's demands are requested has acted or refused to act on a basis which is generally applicable to the whole

[39] *Federal Equity Rules,* 1842.

[40] See United States Parole Comm'n v. Geraghty, 445 U.S. 388, 402-03, 100 S. Ct. 1202, 1211-12, 63 L. Ed. 2d 479 (1980)

[41] *Federal Rules of Civil Procedure*, 28 USC.

class, so that the demands of the whole class are justified or 3) that common legal or factual issues are dominant in relation to the individual issues of class members, as well as that resolving a dispute through a class action would be more effective in resolving the dispute than other available means. Thus, one of the three conditions of Rule 23 (b) needs to be met, while the conditions regarding the number, identity, typicality and adequate representation in Rule 23 (a) must be met cumulatively.

Areas in which this type of dispute resolution most often occurs are liability for product defects, violations of competition rules, environmental protection, human rights violations, securities, etc.

Class action suits in the US are based on the *opt-out* principle, which means that all presumed class members are considered plaintiffs until they decide to leave the class because they have come to realize that their individual claims are large or different enough to justify a separate lawsuit or for any another reason. The court will always set a deadline for class representatives by which time they can notify absent class members that they can participate or *opt-out*. The litigants can at any time, as well as in the regular litigation procedure, agree and conclude a court settlement which will regulate their mutual relationship. Moreover, the number of class members may have a stimulating effect on the defendant to conclude a settlement that they would not otherwise have concluded, but they opt for it in order to reduce the possible costs that may arise thereby.

The main objection against class action suits is that class members do not receive significant, or even any satisfaction in a large number of cases. Not rarely, are there examples of cases where, due to the low value of a dispute or the high fees of attorneys, the members of the class have to settle for the so-called "coupon agreement", which usually implies a purchase, discount, or other benefit of a certain value with the defendant company. This sometimes represents a way for the defendant company to delay or prevent greater liability for the damage they have incurred, given that all the members of the class are bound by a decision in that dispute, thus losing the right to conduct special proceedings. However, a class member always has the *opt-out* option, i.e., to leave the class, and to conduct a separate procedure, although not all plaintiffs are always informed about this right and how to use it.

However, it seems that the advantages of this way of resolving the disputes of a large number of persons against one or more defendants in order to achieve identical claims in relation to a single legal or factual issue still outweigh the presented shortcomings. Among others, the following are the usual advantages of class action suits:

- Combining claims and joint, common decision-making process increases the efficiency of court proceedings with equal and fair exercise of the rights of persons in the same situation, reduces the possibility of creating non-uniform court practice and legal uncertainty, i.e., avoids the situation that different court proceedings, with the same factual and legal basis, have outcomes that differ significantly from each other.
- Relieving the judicial system of repetitive litigation, thus making it possible to avoid repetitive "days of presenting the same evidence and hearing the same witnesses from trial to trial".[42]
- Eliminating the costs of agents, i.e., attorneys who represent clients in such litigations, but also the costs that would be caused by presenting the same evidence in a myriad of disputes with the same case.
- Realizing claims of all plaintiffs in the class action suit procedure at the same time, which reduces the possibility for the first, fastest plaintiff to "take hold of" debtor's assets, i.e., for some injured parties to realize their claims in full, while others remain denied this possibility.
- The outcome of class action suits is usually such that it can influence the change in the behavior of other entities who are in the same legal situation as the defendant, i.e., the opposing party of the class, so that they could avoid possible class action suits against themselves.
- Class action suits can help to overcome the problem of the unwillingness of plaintiffs to institute a special, their own procedure due to the low value of their claim by means of class action suits. By combining a larger number of such smaller claims into one unified claim, the social signifi-

[42] Jenkins v. Raymark Indus. Inc., 782 F.2d 468, 473 (5th Cir. 1986)

cance of the dispute itself and the prospect of success in the procedure increase, i.e., in that case even the claims of less significantly injured parties are still met.

European continental law recognizes the institute of class action suits; however, the law of the Member States regulates it more strictly and conservatively than the USA. It is explicitly prohibited or not regulated in some countries, as a result of which the practice creates procedural situations that practically replace class action suits. In French law, a representative lawsuit allows the association to represent the collective interests of consumers, but with the condition that each plaintiff must be individually named in the lawsuit. Austrian consumer organizations have developed the practice of filing claims on behalf of hundreds or even thousands of consumers. In these cases, individual consumers ceded their claims to one person, who then initiated a regular lawsuit based on the ceded claims. German law prohibits class actions suits in the usual form; however, procedural laws include the possibility of merging several separate court cases into one, which results in a single judgment, but it is allowed only if all the cases have the same factual and legal basis. Swiss law does not allow class action suits as it is strongly believed in that country that proceedings can have significant procedural issues, can be abused, and the amounts usually claimed can be huge, which can expose the defendant to sudden large debts and insolvency.

Model case proceedings can also be very useful in situations where a large number of persons have suffered damage by the action of one legal entity, because, given that it is the same harmful action and based on the relevant number of cases, the so-called sample, they would allow for a kind of precedent and "guide" to be created in all the other cases that have the same factual situation as the cause of action, which would in turn provide great savings for the judicial system of a country in terms of litigation costs.

Based on the presented examples, it can be noticed that there are significant differences between EU Member States when it comes to ways of resolving class action disputes, i.e., mechanisms of legal protection in cases of mass violations of rights. An important step in overcoming these differences is the adoption of the Recommendation on Common Principles for Collective Redress

Mechanisms, adopted by the European Commission in 2013.[43] Its adoption was preceded by the adoption of the Resolution "Towards a Coherent European Approach to Collective Redress" by the European Parliament, which holds the view that the EU should refrain from introducing collective legal mechanisms according to the American model which, according to the European Parliament, makes abuses possible in the great extent, and which does not take into account the legal traditions and legal systems of the Member States.

The two basic procedural mechanisms whose introduction is recommended are an injunctive collective action and compensatory collective action. Injunctive collective action is a special type of condemnation claim which is aimed at preventing or terminating illicit conduct. It requests that the defendant be prohibited from taking action that may violate, i.e., repeating the action that violated the rights of a large number of subjects, which means that it is aimed at achieving preventive protection. In the procedure based on this lawsuit, the principle of urgency is established in order to timely prevent performing or repeating the violating act and in order to enforce court decisions effectively. A recommendation was sent to the Member States to provide sanctions for the defendant who is prohibited from taking certain actions so as to demotivate them to avoid or be late in obeying a court decision. A class action suit for damages is an instrument that enables a large number of persons, injured by the same unlawful act, to obtain damages in one court proceeding, which is especially important when there is a large disproportion between the amount of individually suffered damages and the costs of the proceedings. This demotivates the injured persons to ask for judicial protection, whereas it provides their attorneys with the opportunity to earn a large salary usually at the expense of the state budget. The litigation process is based on the model of *opt-in* procedure (inclusion on explicit request), which is the rule, but there is also the possibility of applying opt-out procedure (exclusion on explicit request), as an exception. The key advantages of the opt-in model are that it is easier to determine the cause of action since it is comprised of all the individual

[43] Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU), „*Official Journal of the European Union – L 201/60*".

claims, that the court can better decide on the admissibility and merits of the claim, and that this model ensures that the judgment will not have legal effect on those persons who did not join the lawsuit.

The recommendation affirms the principle of full compensation for damages, emphasizing that the awarded compensation should be distributed to the injured parties in proportion to the amount of individual damage they have suffered. With regard to the reimbursement of the costs of the proceedings, it is recommended to apply the classic principle according to which the costs are paid by the party who loses the lawsuit. In order to prevent abuse and to file speculative lawsuits, it was recommended to the Member States to use their regulations to ensure that attorney's fees and the method of their calculation do not stimulate the institution of court proceedings that are not aimed at protecting injured parties. The same goal is reflected in the recommendation to the Member States to exclude the possibility for attorney's fees to be determined according to the amount of total compensation, and in case there is such a possibility in principle, to prescribe special rules regarding the amount of attorney's fees.

The Republic of Croatia, whose law on civil court procedure is similar to our CPA, introduced the institute of pilot-judgement procedure by the Act on Amendments to the Civil Procedure Act (CPA HR)[44] in order to resolve issues important for the uniform application of the law.[45] The following are the most important characteristics of this model – procedure:

- The existence of similar disputes that were initiated in large numbers or are expected to be initiated in a shorter period, and the resolution of which depends on the same legal issue that is important for ensuring uniform application of rights and equality of all in its application.
- The proposal for resolving the issue is submitted by the first instance court after the preparatory hearing and the session of the court division.
- The parties cannot freely dispose of the request in the period from the announcement of the proposal for resolving the issue until the end of the pilot-judgement

[44] *NN 70/2019 (July 24, 2019)*
[45] Article 108 CPA HR.

procedure, while for other persons, who have requests in relation to which the proposal for resolving the issue has been submitted, the statute of limitations is delayed for the duration of this period.

- The first instance court formulates a legal issue.
- The decision on the admissibility of the proposal is reached by a panel of the Supreme Court of the Republic of Croatia, and after reaching a decision on admissibility, a panel of five judges decides on an issue important for the uniform application of the law by reaching a decision within 90 days.
- The courts are bound in the proceedings by the legal position taken by the Supreme Court and will endeavor to end the proceedings by settlement or in another indisputable manner.
- The court decides on the costs of the proceedings at its own discretion, but by taking into account the party's interest in instituting proceedings due to the uncertainty of the legal issue, as well as the party's actions after being informed of the legal position.

Having in mind the fact that there are similarities between the legal systems in Serbia and Croatia, similar procedural solutions, the resemblance between the trial-judgement procedure for resolving an issue important for the uniform application of the law and the procedure for resolving a disputed legal issue in domestic law, but also the fact that there are some significant differences, which in themselves represent advantages (prescribed manner of urgent reaction, possibility of initiating cases even when only a large number of proceedings in which a similar issue will be resolved are expected, delay of the statute of limitations which contributes to preventing the accumulation of cases before taking a position, being bound to the legal position that has been taken, provisions on the costs of proceedings), it is advisable to consider the introduction of such or a similar model case proceedings in the domestic Civil Procedure Act.

There is no doubt that great time was wasted on resolving NES cases. A large number of cases resulted in the engagement of a big number of people – attorneys representing plaintiffs, judges, court staff, National Employment Service employees. On the other

hand, large financial resources were spent on resolving NES cases, which, above all, represented a huge financial burden on NES, and thus indirectly on the budget of the Republic of Serbia, despite the fact that NES itself did not hire attorneys to represent it. The budget was also burdened by the additional number of judges who had to be hired to conduct litigations. In 2016 alone, NES had expenses in the amount of approximately one and a half billion dinars because of the NES cases. In the period from 2015 to 2018, NES cases cost the National Service over three billion dinars. Based on the disproportion between the amounts awarded for the principal debt and the costs of the proceedings, it can be concluded that most of the stated amount was paid for the litigation costs, which could have been prevented by settlements or acknowledgement of the claim and, most importantly, by the lawful operation of the National Employment Service. A significant amount of funds was appropriated to reimburse the costs of the enforcement proceedings.

The presence of ethical issues was confirmed by reviewing the case files and the judges' answers to the interview questions. By reviewing the cases, it was established that some attorneys appeared in a large number of the NES cases to represent plaintiffs, while a certain level of repetitiveness was noticed for others. It was noted that a certain circle of experts appeared in the cases, often with a clear division into those proposed by the plaintiffs and those proposed by NES as a defendant. In their responses to the interviews, the judges pointed to the frequent repetition of attorneys and experts in NES cases. All these circumstances raise doubts about the manner of acquiring clients, as well as about the manner of hiring experts, i.e., an already established position of experts in the category of cases, and in accordance with which they were proposed by the parties. Despite such suspicions, no disciplinary actions were instituted against the attorneys for violating the Code.

The question that may arise from the presented factual situation is – what is the interest of plaintiffs to institute proceedings in which the potential gain is insignificant? It is indisputable that the benefit that plaintiffs can gain in a significant number of cases is very small, which is why it is important to consider the reasons why plaintiffs engage in low value disputes in general. The characteristic of mass lawsuits of small value is that it is the attorneys who, contrary to the ethical rules, address clients with a request

to take the case. Plaintiffs are willing to refer a case to attorneys who they trust, especially if they have already represented such cases and have already had success, regardless of potentially small personal benefits. There are also possible situations where mediators, violating the law and ethics, obtain cases for the needs of attorneys, promising the compensation of high value or paying in advance the amounts of claims that can be approved in the procedure. Practice shows that spite or revolt are often the decisive motives for instituting various types of proceedings, which is the case with mass claims as well. Close family or friendly ties, as well as other forms of influence of attorneys on clients, also lead to the acquisition of a large number of mass claims.

Mass claims represent a significant burden on courts and society. The state and the courts did not act preventively, reactively, in a timely manner and adequately in order to prevent their occurrence, i.e., to reach effective resolution. For that reason, it is necessary to make changes that will take into consideration the indisputable social need to eliminate the consequences of mass violations of rights, on the one hand, but also to eliminate systemic shortcomings, and enable law-based efficient, cost-effective and fair trial within a reasonable time on the other.

XII Recommendations

Based on the obtained data, their analysis, and the analysis of the shortcomings of domestic procedural law arising from the analyzed data and practice, certain recommendations can be made for the improvement of the system for resolving mass claims.

Issue	Recommendation
The cause of mass claims	Improving and / or establishing uniformity control mechanisms in order to identify potential mass violations of rights and prevent their occurrence in a timely manner. Establishing mechanisms for demotivating parties to file lawsuits with extremely low value claims.
Inefficient resolution of mass claims	Introducing an institute of class action protection that would be based on constitutionally acceptable principles. Merging multiple procedures into one. Prohibiting the splitting of claims. Peaceful resolution after taking a position on a disputed legal issue / resolution of a disputed issue in a pilot-judgement procedure. Shortening the statement of reasons of the verdict by referring to the positions taken.
Non-uniformity of court practice	Modifying the existing procedure for taking a legal position on a disputed legal issue. Prescribing obligatory, timely and anticipatory reaction of SCC. Introducing the institute of pilot-judgement (model) procedure or pilot judgments.
Disproportion between the claimed amount of the principal debt and the awarded costs	Limiting the duration of proceedings and the number of actions taken in disputes of extremely small value, while anticipating the possibility for deviations to occur in complicated cases. Conducting proceedings at a limited number of hearings through submissions. Sanctioning the splitting of claims by denying compensation for the costs of the procedure.
Tax and expertise costs	Tighter control over the payment of taxes and fees for the work of experts. Unifying the amount of compensation for the work of experts.

Repetitive appearance of the same experts in mass claims and issues regarding their findings and opinions.	Engaging experts according to the ordinal number on the list of experts. Strict management of experts' manner in which they operate and education of experts in order to eliminate errors in expertise. Sanctioning untimely and / or unprofessional conduct of experts. Elimination of excessive confidence of courts in the findings and opinions of experts when a legal issue is in the essence of the dispute. Obligation to give different variants of opinion depending on the allegations of the parties.
Enforcing a judgement	Imposing the payment of costs using specific court accounts or deposits. Introduction of a legal obligation to obtain data for voluntary enforcement of final court judgement. Timely reaction of the enforceable debtor for the purpose of voluntary enforcement of final court judgement.

XIII Literature and Sources

- The Constitution of the Republic of Serbia *"Official gazette of RS"*, no. 98/2006
- The Law on Employment and Unemployment Insurance *" Official gazette of RS"*, no. 36/2009, 88/2010, 38/2015, 113/2017 and 113/2017 – other Law
- Law on Contributions for Compulsory Social Insurance *" Official gazette of RS"*, no. 84/2004, 61/2005, 62/2006, 5/2009, 52/2011, 101/2011, 7/2012 – adjusted amount in dinars, 8/2013 – adjusted amount in dinars, 47/2013, 108/2013, 6/2014 – adjusted amount in dinars, 57/2014, 68/2014 – other Law, 5/2015 – adjusted amount in dinars, 112/2015, 5/2016 – adjusted amount in dinars., 7/2017 – adjusted amount in dinars, 113/2017, 7/2018 – adjusted amount in dinars, 95/2018, 4/2019 – adjusted amount in dinars, 86/2019 and 5/2020 – adjusted amount in dinars.
- Civil Procedure Act *" Official gazette of RS",* no. 72/2011, 49/2013 – decision of CC, 74/2013 – decision of CC, 55/2014, 87/2018 and 18/2020
- Law on Free Access to Information of Public Importance *"Official gazette of RS"*, no. 120/2004, 54/2007, 104/2009 and 36/2010.
- Decision on the number of judges in courts *"Official gazette of RS"*, no. 88/2015, 6/2016, 11/2016, 48/2016, 73/2016, 104/2016, 24/2017, 31/2017, 54/2017
- Professional Ethics Code of Attorneys *"Official gazette of RS",* no. 27/2012
- Tariff on fees and rewards for the work of a attorneys *"Official gazette of RS", no. 121/2012 and 99/2020*
- Civil Procedure Act of Croatia *NN 70/2019 (July 24,.2019)*
- *Federal Equity Rules,* 1842
- *Federal Rules of Civil Procedure*, 28 USC.
- Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (2013/396/EU), „*Official Journal of the European Union – L 201/60*".

- Decision of Constitutional Court of RS no. IUo-45/2020.
- Ruling of Supreme Court of Cassation Rev 947/2020 of March 4, 2020
- Decision of SCC Spp 6/2019 of December 12, 2019.
- Jenkins v. Raymark Indus. Inc., 782 F.2d 468, 473 (5th Cir. 1986)
- Report on the audit of final financial statement of the National Employment Service for 2013 and regularity of operations no. 400-100/2014-05-11.
- Report on the audit of final financial statement of the National Employment Service for 2014 and regularity of operations no. 400-4965/2015-05/8.
- Report on the audit of final financial statement of the National Employment Service for 2015 and regularity of operations no. 400-69/2016-05/8.
- Report on the audit of final financial statement of the National Employment Service for 2016 and regularity of operations no. 400-1912/2017-05/6.
- Report on the audit of final financial statement of the National Employment Service for 2017 and regularity of operations no. 400-1795/2018-05/6.
- Report on the audit of final financial statement of the National Employment Service for 2018 and regularity of operations no. 400-90/2019-05/8.
- Hansberry v. Lee, 311 U.S. 32, 41, 61 S.Ct. 115, 118 (1940)
- https://www.rts.rs/page/stories/sr/story/125/drustvo/2643426/moze-li-nsz-da-trazi-vracanje-naknade.html
- https://vk.sud.rs/sr/solr-search-page/results?page=1&redirected=213&court_type=vks&matter=_none&registrant=_none&subject_number=&date_from%5Bdate%5D=&date_to%5Bdate%5D=&keywords=%D0%A1%D0%9F%D0%9F&phrase=&sorting=by_date_down&results=10&level=0

XIV Appendix – Instruments for collecting data

A questionnaire to collect data from the files of individual cases, an interview questionnaire and requests for access to information of public importance were used in order to collect data.

The forms of the instruments are given below:

RESEARCH
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FORM FOR DATA COLLECTION AT THE COURT'S HEADQUARTERS BASED ON THE REVIEW OF CASE FILES

Court: _____
Place:
Period of collecting data:
Starting date _____ 2020. Finishing date _____ 2020.
Court case number: _____
Questionnaire number: _____
CASE TYPE: Formally closed cases initiated against the National Employment Service and its branches for the compensation for damages / payments due to unlawfully calculated unemployment benefits.

Participants

1. Plaintiff: _____.
2. Plaintiff's Attorney: _____.
3. Defendant: _____.
4. Defense Attorney: _____.
5. Judge (name and surname in the first instance) _____ _____
6. Expert (name, surname and profession): _____ _____

Relevant dates and procedure duration

1. Date of filing the lawsuit: _____.
2. Date of reaching (final) first instance decision: _____.
3. Date of reaching (final) second instance decision: _____ _____.
4. Was the proceeding discontinued or delayed: YES / NO
5. If the proceeding was discontinued or delayed, how long did the discontinuation or delay last (from – to): _____.
6. Were extraordinary legal remedies announced: YES / NO
7. If extraordinary legal remedies were announced:
   a) when and which legal remedy _____,
   b) when was the decision based on the legal remedy reached _____.

Principal and secondary claims and expenses in dinars (RSD)

1. The value of the cause of action indicated in the lawsuit: _____,
2. The total amount of the final awarded principal claim: _____
3. The period when interest calculations start (date): _____
4. The period for which compensation was awarded (actionable right limitation period: from – to) from _____ to _____.
5. The total amount of costs awarded in favor of the plaintiff: _____
6. The amount of the court tax for the lawsuit: _____
7. Is there any evidence (order for payment of the tax) that the plaintiff has been obligated to pay the tax for the lawsuit within the legal deadline?
   YES / NO

8. Is there any evidence that the plaintiff paid the tax for the lawsuit within the legal deadline?

   YES / NO
9. If there is NO evidence that the plaintiff paid the tax for the lawsuit within the legal deadline, is there a court order for enforcing a judgement based on non-payment of the budget revenue relating to court fee?

   Amount of expertise costs: _____.
10. Is there evidence in the files that the plaintiff paid the expert for the costs of the expertise during the procedure?
11. If the plaintiff paid the costs of the expertise during the procedure, was the payment made:

    Into the court's deposit account

    Directly to the expert (in cash or into their account)
12. If there is no evidence of any payment for expertise by the plaintiff during the procedure, were the costs of the expertise approved by the court in the final decision statement of reasons and imposed on the defendant NES and what is their amount?

    NO (were not paid) / YES (paid) _____ RSD (the amount approved in the statement of reasons).
13. Is there any evidence in the files that the plaintiff objected to the statute of limitations for the collection of court tax?

    YES / NO
14. If the plaintiff objected to the statute of limitations for the collection of court tax, state the decision of the court:
    a) Objection sustained:
    b) Objection overruled and the procedure for enforcing a judgement was NOT initiated.
    c) Objection sustained and the procedure for enforcing a judgement was initiated.

Other procedural actions

1. The total number of held hearings: _____.
2. The number of submitted appeals:
   a) Plaintiff _____,

b) Defendant _____.

3. The number of submissions filed by plaintiffs: _____.
4. The number of submissions filed by defendants: _____.

Final ruling of the first instance court

1. The claim was approved.
2. The claim was denied.
3. The claim was dismissed.

Instance procedure

1. Was the first-instance decision revoked and the case returned for retrial:
   YES / NO
2. Decision of the second instance court terminating the procedure:
   a) first instance ruling affirmed,
   b) first instance ruling amended and meritoriously decided: _____,
   c) first instance ruling reversed and meritoriously decided: _____,
   d) first instance ruling reversed and claim dismissed,
   e) appeal dismissed.
3. If there was an appeal, what is the decision on the extraordinary legal remedy? _____

RESEARCH
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INTERVIEW QUESTIONNAIRE

Interview date: _____
Court: _____
Questionnaire number: _____

INTERVIEW TOPIC: Research on the attitudes of judges who acted in the cases that were or have been conducted against the National Employment Service and its branches regarding the unlawfully calculated unemployment benefits for the purpose of obtaining compensation for damages / payment (NES cases).

1. Rough estimate of the number of NES cases that have been processed by the interviewed judge so far: _____
   _____
2. Rough estimate of the average duration of the first instance proceedings in NES cases:
   _____
3. Rough estimate of the average number of hearings per case:
   _____
4. Is it a common practice for the same attorneys to often be engaged to represent plaintiffs?
   _____
5. Is it a common practice for the same experts to often appear in different cases?
   _____
6. Do you think that the mechanisms of judicial practice uniformity in NES cases have been effective, and why?
   _____
7. Do you think that it is necessary to introduce new or modify the existing mechanisms of judicial practice uniformity in mass claims, and if you do, which / how?
   _____
8. Do you think that the courts are disproportionately burdened with mass claims, i.e., cases like those belonging to the NES category?
   _____

9. Do you think that it is necessary to introduce new procedural institutes in order to resolve mass lawsuits more efficiently and cost-effectively, and which ones?

_____

10. Rough estimate of the average awarded principal claim of the plaintiff (in case of the claim approval):

_____

11. Rough estimate of the ratio of the average amount of awarded costs:

_____

12. Does the amount of costs in an average case exceed the principal claim, and if so, by how much / how many times, based on the rough estimate?

_____

13. Is it common for a significant number of proceedings to result in the splitting of claims?

_____

14. Did only a small number of experts of the same profession act in the proceedings?

_____

15. Did the court inspect the manner in which the advance for expertise was paid by a plaintiff as a party who presented such evidence (did the plaintiff pay the expert using a court deposit or directly)?

_____

16. Do you consider that plaintiffs were adequately represented, and if not, why?

_____

17. Do you consider that the defendant provided a legal defense or was adequately represented, and if not, why?

_____

18. Do you consider that the average NES procedure was conducted in accordance with the principles of efficiency and cost-effectiveness or not (give reasons for your opinion)?

_____