

LEGAL AND ECONOMIC ASPECTS OF THE WESTERN BALKANS 'INVESTMENT IN THE EUROPEAN UNION

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Summary: One of the precedents for EU membership is Bosnia and Herzegovina. Some of the conditions that the preceding countries need to fulfill in order to join the European Union, from an economic and legal point of view, are both a guarantor of economic stability and respect for human rights. to achieve economic growth and competitiveness of enterprises. The legal aspect directly related to respect for human rights and fundamental freedoms in accordance with the European Convention on Human Rights and Fundamental Freedoms is the right to a trial within a reasonable time. Therefore, the motive of research in this paper is how to achieve economic and legal stability precisely because these are the conditions that the aspirant countries need to meet for EU membership. In this connection, the content of this paper should point to the notion of corporate governance as a system that enables the creation of a more favorable economic environment for enterprises and as such one of the positive examples that would eve From a legal point of view, the concept of the right to a fair trial will be defined as one of the segments of respect for the rights of the European Convention on Human Rights and Fundamental Freedoms. Respect for the right to a trial within a reasonable time is a basis for timely adoption. judicial decisions and in the interest of legal certainty.

Keywords: European Union, corporate governance, European Convention on Human Rights and Fundamental Freedoms, trial within a reasonable time.

1. INTRODUCTION

This paper analyzes the interest sphere of Bosnia and Herzegovina in the context of the position of one of the countries aiming to enter the European Union. (Hereinafter: EU). Namely, what is inevitable from this point of view is to define how it is possible to create conditions for entry of Bosnia and Herzegovina into this area. Therefore, in this paper there is a double analysis, both from the economic and legal point of view. When talking about the economic aspect, the emphasis is on achieving economic stability. stability in this context should be seen as the task of the precedent countries, which should be fulfilled in terms of how to achieve economic growth and competitiveness of enterprises. What must be defined from a legal point of view is to emphasize the importance of the European Convention on Human Rights and Fundamental Freedoms (hereinafter In this connection, the notion of the right to a trial within a reasonable time and its importance will be defined. Namely, this is precisely because it is a legal aspect directly related to respect for human rights and fundamental freedoms under the ECHR, the right to a trial within a reasonable time.

2. ECONOMIC STABILITY

One of the aspects of a satisfactory economic level for the EU candidate country is adequate economic stability. Namely, the eventual EU member states must also fulfill the task, which is to define the ways in which they can achieve visible economic improvement. economic prosperity should be manifested through the competitiveness of enterprises in the market and thus the realization of economically sound environment. As one of the new concepts in this context is corporate governance. This form of

enterprise has proven to be a positive example for achieving the purpose, that is, economic stability. it is possible to achieve competitiveness of companies in the market. The notion of corporate governance is a new term found in the territory of EU Member States.

3. CORPORATE GOVERNANCE

European documents mainly emphasize the importance of achieving the economic growth of the company. In fact, achieving the economic growth of the company makes them competitive with their positive economic status. Looking at some basic EU documents, it can be undoubtedly noticed that they are always emphasized in all as the most important goals related to the economic growth and competitiveness of EU businesses. These goals are sought to be taken in a serious way by the EU Commission competition system. and applying other regulations that are fundamental to creating a more favorable legal economic environment for EU companies themselves. In order to achieve this, within the corporate law system implemented at EU level, the most well-known forms of business operation are the following:

- The Societas Europa (European Company) and The European Economic Interest Grouping. In addition to these two forms, other instruments are foreseen, such as:
- The European Co-operative Society (The European Co-operative Society),
- The European Mutual Society,
- The European Association⁸⁰

Consequently, it is evident that one of the most important goals for the EU space is precisely the economic stability of enterprises through strengthening their

⁸⁰ Sadžak, M., parishioner, S., Kolenda, D., (2016), Corporate Governance-Global Perspective, Banja Luka: NUBL Banja Luka, University of

Herzegovina, Mostar, SYNOPSIS doo, Zagreb, SYNOPSIS d.o.o.Sarajevo, page two hundred and first

economic activity and globally. What seems to be an important goal is to find instruments that will enable such development of enterprises and thereby achieve their competitiveness and at the international level. It is precisely because of the intention of creating economic stability that the above instruments are defined. Namely, the mentioned forms of companies seek to facilitate business cooperation not only at the EU country level but also at the international level. that the EU space aims to create economically stable enterprises both in the territory of the EU countries and globally. This creates a positive picture for the EU space in the sense that Member States do not broadcast their economic stability in one space only, but their own positive influence they also operate internationally. By creating such an economically positive space, an economically sound environment, the intention of the Member States is to maintain such an economic environment. Therefore, it follows from the above that one of the conditions that is imposed on the countries that are candidates for EU membership is economically viable the stability of the countries which as members need to fit into such a space and continue such a sequence. Corporate governance systems are certainly systems that undergo certain transformations and are imposed by environmental trends. Having in mind the corporate governance system in the world and the EU, it can be said that he will continue to follow the globalization trends and processes that globalization carries.⁸¹

4. CORPORATE GOVERNANCE SYSTEMS

The EU is one unique area in which Member States have an obligation to abide by the rules in force in that area. In the

pursuit of the constant economic stability of both current and new member states, the economic stability of that common space is sought. operates both internally and internationally. In this regard, it is constantly working to find ways to maintain and improve the economic sphere. Bearing in mind that corporate governance has taken on the definition of global proportions, the EU is taking action accordingly. These activities are related to the actualization of the corporate governance system. This is because the said system has shown positive results in terms of economic growth and competitiveness of the company. The above has proved to be a positive example at the global level. Using and further developing corporate governance, the EU is following global trends and within those acts It effectively finds ways for economic development.

5. EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The ratification of the ECHR is a binding legal act for all signatories, including Bosnia and Herzegovina in this regard. The Constitutional Court of BiH, in making its decisions, refers to the human rights standards established by the Convention's safeguard mechanism in Strasbourg. In order for the protection to be effective and to ensure that the subsidiarity principle of the Convention is properly implemented, all domestic courts, municipal, cantonal, supreme or district, basic and supreme, should apply the European Convention on Human Rights in their daily work⁸². Namely, domestic legislation is originally bound to protect human rights guaranteed by the ECHR. This is because the positive interest in the proper application of the Convention is also viewed from the aspect

⁸¹ Sadžak, M, (2016), Corporate Governance-Global Perspective, Banja Luka, NUBL Banja Luka, University of Herzegovina, Mostar, SYNOPSIS d.o.o., Zagreb, SYNOPSIS d.o.o.Sarajevo.str 201.

⁸² Carss-Frisk, M, (2002), The Right to Property, Implementation Guide to Article 1, Protocol No. 1 to the European Convention on Human Rights, Council / Council of Europe.

of cost, which is an economic loss, related to disputes that end negatively in the Strasbourg court. ⁴¹The Conventions read as follows:

"If the Court finds that there has been a violation of the Convention or its Protocols, and if the legislation of the High Contracting Party in question allows only partial redress, the Court shall, where appropriate, determine fair compensation to the injured party." Thus, States which ratify the Convention automatically accept double an obligation under Article 1 and have an obligation that their domestic laws be compatible with the Convention.

6. RIGHT TO TRIAL WITHIN A REASONABLE TIME

When we talk about the right to a trial within a reasonable time then that right is related to the ECHR, that is, it relates to Article 6 paragraph 1 of the same. Namely, paragraph 1 of the ECHR stipulates that when deciding on a particular case in civil rights or obligations or on criminal charges, then everyone has the right to a fair and public hearing within a reasonable time, before an independent and impartial tribunal. When we talk about the right to a trial within a reasonable time, it is one of the fundamental rights protected by the Strasbourg court and the practice before it court is the most valuable source of law in this area.⁸³ Therefore, a trial within a reasonable time is an important segment in the context of the exercise of both civil rights and obligations, and of certain activities and in the context of criminal proceedings. A reasonable time is, in essence, a definite time, therefore a satisfactory time frame, within which a specific judicial decision should be rendered. acting in this way causes negative connotations in the context of the work of the courts, on the other hand, the inability of the party to exercise or defend its rights.

This leads to certain negative consequences in terms of financial compensation to the applicant. Namely, the filing of the Appeal before the Constitutional Court of BiH and the adoption of the same is the result of the finding of a violation of the right to a fair trial, which also causes certain consequences. In this context, the appellant may also be entitled to financial compensation for failure to reach a decision within a reasonable time, or a violation of the right to a fair trial.

From the reasoning of the decision of the Constitutional Court of BiH No. **AP-1724/16**

Several appellants appealed to the Constitutional Court for the length of the proceedings before the Municipal Court. The appeals were filed under number AP-1724/16, AP-4131/16 and AP-4471/16, AP-4510/16, all of which were filed under No. : AP-1724/16.

Appeal no. : **AP-1724/16** states that the application for enforcement before the Municipal Court was filed on 10 March 1997 without a decision on enforcement yet. According to the file, the proceedings have been ongoing for more than 19 years.

Appeal no. : **AP-4131/16** states that on the basis of the executive document, the motion for execution was filed on 06.03.2012, that on 15.12.2016 a decision on execution was issued against which an objection was filed, on which more has not been decided, the proceedings are still ongoing and have been ongoing for more than five years.

Appeal no. : **AP-4471/16** states that on 06.02.2012 a motion for execution was filed, based on a court settlement, for employment claims, and a decision on execution was issued on 21.03.2012. of 10.10.2013, the complaint was rejected and

⁸³Caric, S, (2008), The Right to a Trial within a Reasonable Time, Belgrade: "JP Official Gazette".

by letter of 17.10.2014, the bank was ordered to act on the decision on execution (in 2016, unsuccessfully). By the conclusion of 16.02.2017, it was ordered to check whether the executor has open accounts with other banks. The process takes more than five years.

Appeal no. **AP-4510/16** states that on 17.10.2013. An application for enforcement was filed on the basis of an executive document, the decision on execution was issued on 18.06.2015. on 04.11.2015. by decision, dismissed the executioner's complaint as untimely. 11.05.2016. The judge is responsible for deciding on the third person's complaint and the trial lasts for three years and six months.

The aforementioned applications are recorded under No. **AP-1724/16** as they all relate to the same legal issue. Considering the appeals submitted, the Constitutional Court concluded that the appeals in question met the requirements as to the admissibility of the right to a fair trial under Article 6 § 1 of the ECHR and the right to property under Article 1 of Protocol No. 1 to the ECHR.

In the present appeals, the violation of the rights referred to in Article 6, paragraph 1 of the ECHR was found. The Constitutional Court held that each appellant was entitled to compensation for the non-pecuniary damage suffered by the appellants for the violation of the said rights. , considered that each appellant was entitled to a non-pecuniary damage compensation, a compensation in the amount of KM 1,000.00, and decided to award the same compensation to all the appellants and that the same would be an adequate satisfaction. in the operative part of the decision, take effective measures to prevent violations of constitutional rights, or eliminate the consequences of violating them, both in the

case of the said appellants and in relation to all other persons in a relevant or similar situation. Therefore, failure to respect the right to a trial within a reasonable time represents a direct violation of the provisions of Article 6, paragraph 1 of the ECHR. Namely, Bosnia and Herzegovina has ratified the ECHR and thus it is directly applied in the domestic legal system. First of all, respecting these regulations, has a positive effect on the effectiveness of legal protection. The peculiarity of awarding a right to a right to a trial within a reasonable time is reflected in the fact that, where regulated, the court of the respondent state may also award the fee. In order for that fee to be accepted by the Strasbourg court, it is important that it appropriate and sufficient satisfaction for the violation of the right to a trial within a reasonable time. In determining the amount of compensation the court guides its practice in similar situations, whereby the arbitrator takes the length of the proceedings, its complexity, the number of prominent violations, the importance of the case to the applicants, the behavior of the participants in the proceedings and competent authorities.⁸⁴

7. FAILURE TO EXECUTE DECISIONS IN WITHIN A REASONABLE TIME

What is very important to note in the context of the right to a trial within a reasonable time is also to enforce a particular decision within a reasonable time. Here, it is also important to note certain circumstances created by the parties themselves in the proceedings, thus affecting the length of the court proceedings and not executing the decision. Namely, considering the right of one of the parties, that is, to exercise the same on the basis of the decision to be enforced, the fact of the right of the other party to participate in the proceedings cannot be neglected.

⁸⁴ Caric, S, (2008), The Right to a Trial within a Reasonable Time, Belgrade: "JP Official Gazette".

When talking about that party's participation in the proceedings then it should be stated that these second or third parties have the same rights as the claimant himself. It is precisely in these situations that circumstances arise that, in order to respect the principles of equality of all parties to the proceedings, affect the length of the proceedings themselves. This is reflected in the fact that each claim the parties to the proceedings should decide, each submission submitted to the other parties to the proceedings for review. they must have information about the status of the case and have a decision on their request. All these actions additionally affect the length of the proceedings. This is also due to the fact that the possibility of investing and remedies to the decisions is also present, thus making decisions of a higher instance. This may also be classified as a matter of complexity, and this is also defined by the numerous requests of the parties to the proceedings to be decided. The fact is that certain proceedings take a longer period of time beyond the trial within a reasonable time but in In some situations, the parties themselves influence the length of the proceedings by their actions.

7.1. The consequences of not making a decision within a reasonable time

Thus, the importance of making decisions within a reasonable time is one of the indispensable segments of the right to a fair trial as a guarantee of the right to timely judicial protection. An individual or more of them, as parties to a proceeding seeking to exercise their right, expect a resolution of the legal situation and a decision on the request they have made. The transitional timeframe for reaching a decision within a reasonable time leads to a finding of a violation of the right to a trial within a reasonable time. deadline. In this regard, the Constitutional Court of BiH has taken judicial notorious case law, which is evident through certain decisions of the

Constitutional Court. Namely, what can be observed in the content of the decisions of the Constitutional Court is the determination of the right to a certain financial compensation to the appellants. Therefore, the applicant who succeeds with the Appeal by the decision of the Constitutional Court is also entitled to financial compensation.

This monetary remuneration is essentially a sanction for inadequate treatment, which has a negative impact on the exercise of judicial protection through the guarantor of the rule of law. Compliance with ECHR standards is also avoided by national law. This is because the applicant who succeeds in the dispute is entitled to an additional compensation for the damage suffered as a result of the violation of the right to a trial within a reasonable time.

Therefore, in the context of reaching a decision within a reasonable time and the untimely exercise of its rights, it results in a negative connotation regarding the exercise of the right to judicial protection and thus a negative economic sign. Namely, the negative economic sign is also reflected by the compensation of damages in a certain amount of money.

8. CONCLUSION

Bearing in mind the affinity of Bosnia and Herzegovina for EU membership, since Bosnia and Herzegovina is a signatory to the Stabilization and Association Agreement, certain conditions for membership are necessary. Namely, some of the conditions that must be fulfilled for joining the EU are just satisfactory economic and legal segments. Achieving economic stability is possible through a corporate governance system. Such a system is broadcast in positive economic connotations across the EU. By applying this system it is possible to influence positive economic stability. Namely, forming a corporation creates a positive business environment that also operates on a global scale. The above has proven to be

a positive example used in the EU space, which in this way also follows globalization economic trends. On the other hand, therefore, from a legal point of view, one of the conditions to be fulfilled is compliance. ECHR. In fact, this paper provides an overview of the importance of trial. Therefore, timely decision-making enables interested parties to exercise their rights through a system of legal protection. The right and exercise of the right to a trial within a reasonable time allows for a positive presentation in the context of judicial protection, which is also subject to. Otherwise, sanctions may be granted by way of granting a certain Appeal before the Constitutional Court and a specific financial compensation to the applicants as a satisfaction that they did not exercise their right in a timely manner. This creates a negative environment from an economic point of view, in terms of the economic undermining of a country whose legal system has gone through the sphere of legal omission. The EU is a space that seeks to maintain both economic and legal stability. This is because of the reasons Š it is these countries that, upon entering the EU, should continue such a sequence in order for that target community to continue to function as such and thus to comply with the rules in the same. Therefore, the EU is a space that accepts new members under certain conditions for them, which should. In this connection, the motive for the research in this paper was, therefore, how to achieve economic and legal stability precisely because these are some of the conditions that the aspirants need to fulfill for EU membership.

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