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EXCEPTION FROM THE SUBSIDIARITY OF THE CONSTITUTIONAL COMPLAINT IN THE REPUBLIC OF SERBIA

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Abstract. *Subsidiarity is one of the essential features of the constitutional complaint as an extraordinary legal remedy for the protection of human rights. The subject matter of this paper is the exception from the subsidiarity of the constitutional complaint in the Republic of Serbia. According to the hitherto constitutional practice, this exception has been established twice, both times by a piece of ordinary legislation. In 2007, it was set in favor of the right to a trial within a reasonable time, in general terms. In 2023, it was established in favor of the same right but in narrower terms. Although such legislative action may be justified from the perspective of constant adjustment of the national human rights' protection system to the international one, it is not acceptable from the constitutional point of view. In other words, the current constitutional framework is not flexible enough to justify the exception from the subsidiarity of the constitutional complaint by a piece of ordinary legislation, regardless of how appropriate the establishment of this exception may be as a systemic measure in the context of implementation of the ECtHR judgments.*

Key words: *constitutional complaint, subsidiarity, exception from subsidiarity, right to trial within a reasonable time.*

1. INTRODUCTION

A constitutional complain is an extraordinary legal remedy established for the purpose of a direct constitutional court protection of human rights and freedoms (Pajvančić, 2011:86). In many constitutional systems, it also serves as a direct link between the national concept of human rights' protection and the concept established by the European Court of Human Rights (ECtHR) from both formal and substantive point of view (Nastić, 2019: 283-284). Accordingly, being authorized to decide on this legal remedy, constitutional courts are not only an important "filter" in terms of reducing the ECtHR caseload (Šefer,

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2010:179) but they also have a protective role with regards to the state reputation. The same applies to the Constitutional Court of the Republic of Serbia, which can be designated as "a protector of the legal dignity of the state of Serbia" (Nenadić, 2012: 74). Yet, both protection concepts, the European one (provided by the ECtHR) and the domestic one (provided by constitutional courts), are subsidiary by their nature. Therefore, the subsidiarity of protection of human rights and freedoms may be marked as their common characteristic.

However, the principle of subsidiarity is also one of the essential features of the constitutional complaint as the last-resort extraordinary legal remedy which can be used for protection of human rights within the national legal system. Therefore, the constitutional complaint can be lodged only after exhausting all other legal remedies provided by the domestic legal system. In other words, subsidiarity can be seen as a procedural presumption for its submission. However, considering that examples of departure from the subsidiarity principle may be found in comparative law and practice, the exceptions related to the application of this principle deserve special attention.

The subject matter of this paper is the exception from the subsidiarity of the constitutional complaint in the legal system of the Republic of Serbia, which entails an exception from the general requirement to exhaust all legal remedies before lodging a constitutional complaint. Thus far, the exception from the subsidiarity of the constitutional complaint has been introduced twice, both times by an ordinary piece of legislation, and both times in favor of the right to a trial within reasonable time but with significant differences. Therefore, the analysis will chronologically cover the evolution of the exception from the subsidiarity of the constitutional complaint, with specific reference to the rationale and the manner of introducing this concept into the Serbian legal system. Moreover, the manner of introducing the exception from the subsidiarity of the constitutional complaint in the Serbian legal system put in question of the constitutional nature of this legal remedy and also had a significant impact on the scope of competences of the Constitutional Court and the ordinary courts. Therefore, the main hypothesis can be summarized as follows: the existing constitutional framework is not flexible enough to justify the introduction of the exception from subsidiarity of the constitutional complaint by a piece of ordinary legislation, regardless of how appropriate it could be as a systemic measure in the context of implementation of the ECtHR judgments.

Finally, as an extraordinary legal remedy, the constitutional complaint has constantly been a source of tension between the ordinary courts and the Constitutional Court. Generally speaking, the constitutional complaint "has brought constitutional courts closer to judicial authorities and enabled a direct and constant contact with the judicial decisions of these courts" (Nenadić, 2014:344). In the context of the Constitution of Serbia, the constitutional complaint established "indisputable and unbreakable ties between the Constitutional Court and the courts" (Petrov, Prelić, 2019:94). Therefore, this exception from the subsidiarity of the constitutional complaint will be also analyzed in light of the recent revision of constitutional provisions pertaining to the judiciary (and public prosecution).

2. SUBSIDIARITY OF THE CONSTITUTIONAL COMPLAINT

In general, the human rights' subsidiarity can be observed through three different types of subsidiarity: procedural subsidiarity, substantive subsidiarity, and remedial subsidiarity (Besson, 2016:78-83). The principle of subsidiarity is a corner stone of the European

Convention on Human Rights (ECHR) system. In light of the process-based review mechanism established by the European Court of Human Rights (ECtHR), the subsidiarity principle implies that the Convention principles have to be adequately embedded in the domestic legal order, and respected and observed by domestic decision-makers (Spano, 2018: 480-481). Yet, within the ECHR system, the first requirement for procedural subsidiarity is the exhaustion of all domestic legal remedies (Besson, 2016:79), which entails that all remedies provided by the domestic legal order shall be exhausted before filing an application with the ECtHR.

There are certain similarities between the ECtHR system of human rights protection and the protection system of the Constitutional Court of Serbia. However, the Constitutional Court protection system is based on the constitutional complaint as an extraordinary legal remedy established for the purpose of enabling direct access to this Court by individuals. The subsidiary nature of this type of protection is twofold. Firstly, the constitutional rights should be primarily protected within the domestic court-protection system (preferably at the lowest possible level). Ordinary courts are expected to interpret the human rights' protection issues in light of the Constitutional Court jurisprudence (which is commonly based on the ECtHR case law). Secondly, the subsidiary nature of this type of protection can be observed through its procedural dimension, expressed in the procedural presumptions of the constitutional complaint.

In general, subsidiarity shapes the legal nature of the constitutional complaint as an extraordinary legal remedy. The application of this legal remedy is conditioned by the prior exhaustion of all legal remedies provided by the domestic legal system. Therefore, subsidiarity can be described as "an important feature of this legal remedy" (Pajvančić, 2011: 98) and "one of the substantial features of the institutional logic of a constitutional complaint" (Simović, 2019: 34).

In terms of comparative law, the exhaustion of all available legal remedies has been seen as "an important if not a key procedural precondition" for lodging a constitutional complaint (Đurić, 2000:119). Indeed, the subsidiarity of constitutional complaint can be found in many states which abide by the concentrated judicial review system. Some differences can be observed in light of the peculiarities of domestic legal contexts.[1] The Constitution of the Republic of Serbia[2] follows the same institutional logic of a constitutional complaint. According to Article 170 of the Constitution, a constitutional complaint as an extraordinary legal remedy may be lodged against an individual act or action of the state bodies or organization entrusted to exercise the delegated public powers in case they violate or deny the guaranteed human and minority rights and freedoms. The extraordinary feature of this legal remedy is expressed in the procedural presumption for its submission, which is established in the same constitutional provision. Namely, a constitutional complaint may be lodged either after exhausting all legal remedies for the protection of human and minority rights and freedoms or in case other legal protection remedies are not specified (Article 170 of the Constitution). Hence, the constitutional complaint can also serve as an exclusive legal remedy in case of a legal gap (Nenadić, 2010:66).

The constitutional scope of subsidiarity of a constitutional complaint has been also expanded in ordinary legislation. Namely, in addition to the two constitutional provisions,

[1] *See:* European Commission for Democracy through Law (Venice Commission) (2021). Revised report on individual access to constitutional justice, Opinion No. 1004/2020, CDL-AD(2021)001, European Commission for Democracy through Law (Venice Commission), Strasbourg, 22 Feb. 2021

[2] The Constitution of the Republic of Serbia, *Official Gazette RS*, 98/2006, 115/2021.

the Constitutional Court Act (hereinafter: the CC Act)[3] envisages another possibility for the submission of this legal remedy. Thus, under Article 82 § 1 of the CC Act, a constitutional complaint may also be lodged in case the right to judicial protection of human and minority rights and freedoms has been expressly excluded by the law. However, the normative framework has not provided an answer to the question which legal remedy may be considered as the last-resort remedy in terms of submission of a constitutional complaint. This legal gap has been filled by the official standpoints of the Constitutional Court.

3. Exception from the Subsidiarity of the Constitutional Complaint

In comparative law, the subsidiarity of the constitutional complaint is not stipulated in absolute terms. In other words, in some exceptional cases, the exhaustion of all legal remedies is not required for the submission of this legal remedy. It can be seen as a consequence of balancing between different constitutional values which must be equally respected and protected.

In some states, the constitutional complaint can be lodged without exhausting all legal remedies. The most prominent example is the constitutional system of Germany (Simović, 2019:35). The exhaustion of all legal remedies is also not required in some other states (e.g. Austria, Croatia, the Czech Republic, Germany, Latvia, Slovakia, Slovenia and Switzerland) if this requirement could cause an irreparable damage to an individual (Venice Commission, 2021: 23).[4] The expansion of this exclusion of subsidiarity leads to the conclusion that the constitutional complaint has slowly been changing its legal nature toward the concept of an ordinary legal remedy (Simović, 2019:36). Indeed, the presence of this exemption slightly blurs the border between the ordinary judicial protection and Constitutional Court protection of human rights and freedoms.

The exception from the subsidiarity of the constitutional complaint has existed in the constitutional system of the Republic of Serbia since the adoption of the Constitution 2006. Considering the evolution of the normative framework of subsidiarity of the constitutional complaint within the observed period, we may observe three different stages. The first stage was the introduction of the exception from the subsidiarity of the constitutional complaint into the legal system (2006); the second stage was the removal of exclusion of the subsidiarity principle from the legal system (2015); the third stage was its re-introduction into the legal system (2023) but with a slightly different conceptual framework.

3.1. Introduction of exception from the subsidiarity of the constitutional complaint

The constitutional complaint (as an extraordinary legal remedy) and the concept of subsidiarity (as a normative expression of its subsidiary legal nature) have been established by the Constitution of Serbia adopted in 2006. This normative solution practically marked the return to a similar concept of this legal remedy which had existed during a former period in the Serbian constitutional history.[5] However, the exception from the subsidiarity

[3] The Constitutional Court Act (*Zakon o Ustavnom sudu*), *Official Gazette RS*, 109/2007, 99/2011, 18/2013–CC decision, 103/2015, 40/2015–another law, 10/2023, 92/2023.

[4] EC/Venice Commission (2021). Revised report on individual access to constitutional justice, Opinion No. 1004/2020, paragraph 88.

[5] For more on this topic, see: Simović, 2010: 201-203.

of the constitutional complaint was introduced by the CC Act (2007).[6] It was established in favor of the right to a trial within a reasonable time. It should be noted that this exception was set in general terms, regardless of the type of judicial procedure and the subject matter of judicial dispute.

The main reason for introducing the exemption of subsidiarity of the constitutional complaint in the Serbian legal system was to provide an effective legal remedy for the protection of the right to a fair trial within a reasonable time. This legislative intervention was directly triggered by the ECtHR judgment in the case *V.A.M. v Serbia* (appl.no. 39177/2005). According to the ECtHR, the national system of the Republic of Serbia at that time did not provide an effective legal remedy which would be available to citizens for the protection of this right (Simović, 2010:205). This legislative intervention practically supplemented the normative solution stipulated in the Constitution. It was done for the purpose of harmonizing the national legislation with European law and meeting the obligations undertaken by the ratification of the ECHR. Yet, this legislative approach, which entailed the modification of the constitutionally established legal remedy by the ordinary law, was criticized in domestic constitutional theory. Constitutional law scholars underlined that , although this normative intervention may have been justifiable, the legislator was not authorized to alter "the institutional nature of certain constitutional institutes" (Simović, 2010:205) by an ordinary law. It should not be neglected that this normative solution produced at least two consequences of constitutional importance. First, as already noted, it modified the constitutionally guaranteed subsidiarity of the constitutional complaint. Second, it made an impact on the scope of competences of ordinary courts and the Constitutional Court.[7] However, this legal provision was not challenged before the Constitutional Court in terms of its constitutionality during the period when it was in force.

3.2. Removal of the exception from the subsidiarity of the constitutional complaint

A change in the concept of protection of the right to a trial within a reasonable time was marked by adoption of Act on Protection of the Right to Trial within a reasonable time (2015).[8] Under this Act, the protection of the right to a trial within a reasonable time was perceived as a procedural matter, and placed in the domain of ordinary courts. Thus, the subsidiarity of the constitutional complaint was restored to its full and absolute scope. By the entry of this law into force, the CC Act (2007) provision, which had stipulated the exemption of the subsidiarity of the constitutional complaint in the favor of the right to a trial within a reasonable time, ceased to be valid.[9] The same applied to the former Act on the Organization of Courts (2008),[10] which had practically been the first fragmentary attempt to introduce ordinary courts in the process of protection of the right to a trial within a reasonable time.[11]

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[6] Article 82 § 2 of the Constitutional Court Act (*Zakon o ustavnom sudu), Official Gazette RS,* 109/2007.

[7] Under the Constitution, the competence of the Constitutional Court can be established by an ordinary law. It may be marked as one of the anomalies of the Constitution, bearing in mind the statement of the constitutional theory according to which the separation of powers should be set forth by the Constitution itself.

[8] The Act on Protection of the Right to Trial within a Reasonable Time (*Zakon o zaštiti prava na suđenje u razumnom roku), Official Gazette RS*. 40/2015, 92/2023.

[9] Article 36, point 2 of the Act on Protection of the Right to Trial within a Reasonable Time, 40/2015, 92/2023.

[10] Act on the Organization of Courts (*Zakon o uređenju sudova*)**,** *Official Gazette RS*, br. 116/2008, 104/2009, 101/2010, 31/ 2011-another law, 78/2011-another law, 101/2011, 101/2013,40/ 2015-another law, 106/2015, 13/2016, 108/ 2016, 113/ 2017, 65/2018-CC decision, 87/2018, and 88/2018-CC decision.

[11] Article 36, point 1 of the Act on Protection of the Right to Trial within a Reasonable Time, 40/2015, 92/2023.

However, the adoption of the Act on Protection of the Right to Trial within a reasonable time (2015) may be described as an incomplete solution with regards to the compliance with the international standards. More precisely, this Act did not manage to provide a complete protection of this right, thus leaving uncovered the administrative procedure which also falls under the scope of Article 6 of the ECHR (Trifković, 2017:190-193).

3.3. Re-introduction of the exception from the subsidiarity of the constitutional complaint

In 2023, the exception from the subsidiarity of the constitutional complaint was re-introduced in the Serbian legal system by the Act amending the Constitutional Court Act (2023).[12] In this Act, the exception has been set in favor of the right to a trial within a reasonable time but, this time, with a slightly different normative solution. The protection of the right to a trial within a reasonable time has not been given in a full scope, regardless of the type of judicial dispute, but it has been connected with a specific type of judicial disputes. Under Article 2 of the amended CC Act, the protection of the right to a trial within a reasonable time can be pursued even though the legal remedies have not been exhausted in case of bankruptcy and executive proceedings conducted for the purpose of settling the recognized or established claims. In any case, the bankrupt or executive debtor must be a company with the majority of social or state capital.[13]

The reintroduction of the exception from the **s**ubsidiarity of the constitutional complaint has been directly connected with the implementation of ECtHR judgments related to the non-enforcement or delayed enforcement of domestic judgments rendered against the companies predominantly composed of the state or social capital. It was expressly underlined as a reason in the Government's Proposal for the Act amending the CC Act.[14] Actually, the Government stressed at least two crucial arguments in favor of this normative solution. First, the enforcement of a group of ECtHR judgments (in the case *R. Kačapor and others v. Serbia*[15] and other similar case) has been under the close scrutiny of the Committee of Ministers of the Council of Europe. According to the Committee findings, the Act on Protection of the Right to Trial within a Reasonable Time was not an adequate normative framework for dealing with this particular matter. Second, according to the existing jurisprudence of the ECtHR, the constitutional complaint was marked as an effective legal remedy for the protection of the right to a trial within a reasonable time (and the right to property) in the group of cases regarding Serbia. For these reasons, the re-introduction of the exception from the subsidiarity of the constitutional complaint has been seen as an adequate tool for the implementation of ECtHR judgments on this particular matter. [16]

The new normative solution (re-introducing the exception from the subsidiarity of the constitutional complaint) has been followed by introducing amendments to the Act on

[12] The Act amending and supplementing the Constitutional Court Act (*Zakon o izmenama i dopunama Zakona o Ustavnom sudu), Official Gazette RS*, 92/2023.
[13] Article 2 of the amended Constitutional Court Act, 92/2023.
[14] RS Government Proposal for the Act on amendments to the Constitutional Court Act (Predlog zakona o izmenama Zakona o ustavnom sudu), Internet stranica Narodne Skupstine RS, 17.1.2023; https://www.paragraf.rs/dnevne-vesti/200123/200123-vest19.html
[15] ECtHR case: *R. Kačapor and others v. Serbia*. Case Ap. 2269/06, 3041/06, 3042/06,3043/06, 3045/06, 3046/06, Judgment 15 January 2008, Strasbourg, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-84365%22]}
[16] RS Government Proposal for the Act amending and supplementing the Constitutional Court Act,. 17.1.2023;

Protection of the Right to a Trial within a Reasonable Time (2023).[17] According to the amendments, this Act is not applicable to bankruptcy and executive proceedings instituted for the purpose of settling recognized or established claims where the debtor is a company with majority social or state capital (Art. 1). All legal remedies in pending judicial cases on this particular matter, submitted under this Act, have been transformed into the constitutional complaint (Art. 16). Apparently, this legislative intervention has affected the scope of the Constitutional Court competences.

The introduction of the exception from the subsidiarity of the constitutional complaint is practically a measure aimed at ensuring the implementation of the aforesaid type of ECtHR judgments, chosen by the legislator as a systemic solution. However, the manner of enforcing the ECtHR judgments may be also observed through the perspective of the subsidiarity principle. It is based on the presumption that the national authorities are in a better position to decide on appropriate measures for the enforcement of these judgments (Kellen, Marti, 2016:385, fn. 39,40).

4. Exception from the Subsidiarity of Constitutional Complaint: Constitutionally Acceptable Model?

The constitutional practice shows two examples of exception from the subsidiarity of the constitutional complaint, both introduced by a piece of ordinary legislation. Bearing in mind the constitutional nature of constitutional complaint and the subsidiarity as its essential feature, this legislative approach has directly put the extraordinary nature of constitutional complaint into question.

The constitutional complaint is a legal remedy explicitly stipulated in Article 170 of the Constitution, which also envisaged the subsidiarity of this legal remedy. Although many objections can be made in terms of precision of this provision, the constitutional nature of this remedy is indisputable (Simović, 2010: 203-204). Consequently, the structural elements of this legal remedy can only be alternated by legal provisions of the constitutional rank. Formally speaking, the deficiency of the constitutional provision on constitutional complaints, regardless of how justified it is, cannot be corrected by an ordinary piece of legislation. Thus, from the formal point of view, the legislative interventions made in 2007 and 2023 cannot be considered as constitutionally admissible.

On the other hand, leaving aside this isolated interpretative approach and observing the exception from the subsidiarity of the constitutional complaint in a wider constitutional context, there are some constitutional provisions which should also be taken into account. According to the Constitution, the provisions on human and minority rights and freedoms have to be interpreted in compliance with current international standards as well as the practice of international institutions which supervise their implementation (Article 18 § 2). The ratified international treaties as well as generally accepted rules of the international law are part of the legal order and shall be applied directly. The ratified international treaties must be in compliance with the Constitution (Article 16 § 2). The citizens of the Republic of Serbia have a constitutionally guaranteed right to refer to international institutions for the purpose of protecting their rights (Article 22 § 2). This set of constitutional provisions determines the

[17] Articles 1 and 16 of the Act amending and supplementing the Act on Protection of Trial within a resonable Time (*Zakon o izmenama i dopunama Zakona o zaštiti prava na suđenje u razumnom roku), Official Gazette RS,* 92/2023.

core relationship between domestic and international systems of human rights and freedoms. An implicit element of this constitutional frame is the state obligation to implement the ratified international treaties. This set of constitutional provisions, as well as the strict constitutional provision on constitutional complaint which does not allow any kind of exception from the subsidiarity principle as the core element of a constitutional complaint, practically put the legislator in a pretty uncomfortable position. Thus, finding a normative solution for the protection of the right to a trial within a reasonable time within the concept of the constitutional complaint could be a difficult task.

It is indisputable that the evolution of international standards of human rights calls for a constant adjustment of domestic legal system. In some cases, it is a matter of interpretation of the constitutionally guaranteed human rights and freedoms. Sometimes, the legislator is the one who is required to search for an adequate normative solution in order to follow these standards. In the context of the subject matter of this paper, the legislator was required to find an effective legal remedy for the protection of the right to a trial within a reasonable time in light of the ECtHR jurisprudence and to cope with the obligation accepted by the ratification of the ECHR. The solution was to modify the constitutional nature of the constitutional complaint.

The revision of the Constitution in 2022, aimed at amending the constitutional provisions related to the judiciary and public prosecution, did not deal with the provisions of the exemption of subsidiarity of the constitutional complaint. The constitutional revision mainly focused on the independence of the judicial power in relation to the political bodies, leaving the constitutional provision on constitutional complaint untouched. However, one aspect of the relationship between ordinary courts and the Constitutional Court has been taken into account. As a result, according to the new constitutional provision, the Constitutional Court has finally become authorized to reassess the court decision in the constitutional complaint procedure.[18] Thus, the main dispute on the highly sensitive relations between the regular courts and the Constitutional Court has finally been resolved. The solution made by the Constitutional Court case-law, which allowed this, has finally become indisputable from the formal (constitutional) point of view.[19]

However, the matter of flexibility of the subsidiarity of the constitutional complaint was not in the focus of the revision authority although it could also be considered in the context of judicial independence, the constitutionally guaranteed right to a trial within a reasonable time, and the ECtHR statement on constitutional complaint as an effective legal remedy in the protection of this right. Therefore, the constitutionally guaranteed subsidiarity of the constitutional complaint is still an essential feature of this legal remedy in the constitutional system.

5. CONCLUSION

In light of establishing a correlation between the national and the European system of human rights' protection, the constitutional complaint plays the crucial part. Thus, the constitutional framework of this extraordinary legal remedy must be defined clearly. The exception from the subsidiarity of the constitutional complaint, as an essential feature of

[18]Article 142. Paragraph 4. Constitution of the Republic of Serbia. *Official Gazette RS*, 98/2006, 115/2021.
[19]Constitutional Court of Serbia, CaseIUz-97/2012, *Official Gazette RS*, no. 18/2013.

this legal remedy, must be also stipulated expressly. In the Constitution of the Republic of Serbia, this is not the case.

The constitutional practice of the Republic of Serbia shows that the exception from the subsidiarity of the constitutional complaint was instituted twice. Both times it was triggered by the jurisprudence of the ECtHR in terms of providing an effective legal remedy in favor of the right to a trial within a reasonable time. The first normative solution set this exemption in favor of the right to a trial within a reasonable time in general terms, regardless of the judicial procedure and the subject matter of judicial dispute. The second normative solution has been set in narrow terms, with regards to the specific subject matter of judicial dispute. Both times the exception from the subsidiarity of the constitutional complaint was introduced in the Serbian legal system by amending the Constitutional Court Act, i.e. by a general act of a lower legal power than the Constitution. This normative approach has slightly changed the constitutional nature of the constitutional complaint, and had a considerable impact on the scope of competence of the Constitutional Court and the ordinary courts.

Taking into account all relevant constitutional provisions related to the place of the international law on human rights and its impact on the domestic legal order, as well as the strict constitutional provision on the constitutional complaint, we may draw the following conclusion: the existing constitutional framework is not flexible enough to justify the introduction of exception from the subsidiarity of the constitutional complaint by a piece of ordinary legislation, regardless of how appropriate it could be as a systemic measure in the context of the ECtHR judgments' implementation. In other words, the introduction of exception from the subsidiarity of the constitutional complaint by a piece of ordinary legislation could not be considered as constitutionally acceptable in light of current constitutional framework.

The correlation between the national and the European system of human rights' protection, as well as the obligations related to ratified international treaties, apparently require constant and even urgent adaptation. This is particularly true in relation to the problem of non-enforcement or delayed enforcement of judgments rendered against companies predominantly composed of the state or social capital. As noted, this sensitive topic has attracted the attention of the CoE Committee of Ministers but, in any case, no legislative solution can contradict the Constitution. In terms of the compliance with the international standards, the most adequate solution could only be a slight modification of the constitutional provision on subsidiarity, defined in as narrow terms as possible, in favor of the right to a trial within the a reasonable time. In the absence of this constitutional solution, the current provision on the exception from the subsidiarity of the constitutional complaint cannot be constitutionally acceptable.

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ODSTUPANJE OD SUPSIDIJARNOSTI USTAVNE ŽALBE U REPUBLICI SRBIJI

Supsidijarnost je jedna od suštinskih obeležja ustavne žalbe kao pravnog sredstva za zaštitu ljudskih prava. Predmet rada jeste izuzetak od supsidijarnosti ustavne žalbe u Republici Srbiji. Prema postojećoj ustavnoj praksi, ovaj izuzetak je do sada uveden dva puta, oba puta zakonom: 2007. godine postavljen je u korist zaštite prava na suđenje u razumnom roku, na opšti način; godine 2023. postavljen je u korist istog prava, ali u užem obimu. Iako postupanje zakonodavca može biti opravdano iz perspektive neprestanog prilagođavanja unutrašnjeg sistema zaštite ljudskih prava evropskom, ono ne može biti opravdano sa ustavnopravnog stanovišta. Drugim rečima, postojeći ustavni okvir nije dovoljno fleksibilan da opravda uvođenje izuzetka od subsidijarnosti ustavne žalbe (običnim) zakonom, bez obzira koliko to može biti shvaćeno kao odgovarajuća sistemska mera u kontekstu sprovođenja odluka Evropskog suda za ljudska prava.

Ključne reči: *ustavna žalba, supsidijarnost, izuzetak od supsidijarnosti, pravo na suđenje u razumnom roku.*