

EXERCISING THE RIGHT TO MAINTENANCE BETWEEN SPOUSES AND EXTRAMARITAL PARTNERS IN THE CASE LAW OF THE BASIC COURT IN NIŠ *

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Bojana Arsenijević

Faculty of Law, University of Niš, Serbia

Abstract. *The law regulates the right to maintenance between spouses and between extramarital partners, the conditions under which it can be exercised, as well as a special litigation procedure for obtaining the right to maintenance. The existential character of the right to maintenance stresses the need to examine the functional quality of the established legal mechanism. The author has conducted an empirical research on maintenance litigation proceedings between spouses and extramarital partners which were conducted before the Basic Court in Niš and finished during the year 2018. In this paper, the author presents and analyzes the results of research in litigation proceedings for establishing and varying the maintenance amount, and terminating and extending the duration of maintenance between married or unmarried, current or former partners. The aim of the research was to gain insight into the adequacy of applying relevant legal regulations in practice and the efficiency of providing legal protection in analyzed maintenance lawsuits. The research results reveal the inefficiency of maintenance litigation proceedings and a serious lack of information among citizens about the procedural possibilities in maintenance lawsuits.*

Key words: *maintenance creditor, maintenance debtor, marital and extramarital partners, maintenance litigation, duration of litigation*

1. INTRODUCTION

Demographic data show the raise of a divorce rate¹ in Serbia: in 2017, the divorce rate was 1,3 % and in 2019 it was 1,6 % (Statistical Office RS, 2020). Previous researches among the social service workers in Serbia had shown that one of the biggest crises for spouses during divorce is the inability to separate due to housing and economic problems

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Corresponding author: Bojana Arsenijević, LL.M., Teaching Assistant, Faculty of Law, University of Niš, Trg Kralja Aleksandra 11, 18000 Niš, Serbia. E-mail: a.bojana@prafak.ni.ac.rs

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¹ Divorce rate is the number of divorces per 1,000 inhabitants in the observed territory in the given unit of time.

(Polovina, Žegarac, 2007: 400). These results reflect the need for a closer review on the exercise of the right to maintenance between spouses and former spouses, as well as between extramarital partners and former extramarital partners.² The conditions for exercising the right to maintenance between partners³ are regulated by the Family Act.⁴

Maintenance lawsuits are litigation proceedings for resolving maintenance-related disputes (Mandić, 1991: 37–39), encompassing lawsuits for establishing maintenance, varying a support order amount, ending maintenance, and extending the duration of maintenance.⁵ Maintenance litigation proceedings are conducted according to the rules of special litigation procedure.⁶ An important characteristic of this special litigation procedure is the power of the court to determine the facts of the case which are not disputed between the parties or which are not brought before the court by the parties (Article 205 of the Family Act/FA). Furthermore, the importance of the principles of procedural efficiency and particular urgency is emphasized, and the stipulated procedural time limits ensure prompt decision-making (Article 280 of the FA).⁷ In the special litigation procedure, the principle of disposition is narrowed: the waiver of the right to maintenance is prohibited and the parties may settle only on the mode and amount of maintenance, not on the right to maintenance itself (Stanković, 2006: 204). The court may decide *extra petitem* (Article 281 of the FA) and the public is excluded from the hearings (Article 206 of the FA). The court has discretionary powers when deciding about the proceedings' costs and may take into account the reasons of fairness (Article 207 of the FA). Maintenance litigation can be conducted as the main proceeding or as an ancillary proceeding, as a part of divorce/annulment proceedings.⁸

² The right to maintenance between spouses is stipulated in Article 28 and Article 151, with reference to Article 279 (para.3) of the Family Act, *Official Gazette RS*, 18/2005, 72/2011 – other law and 6/2015. The right to maintenance between extramarital partners is stipulated in Article 4 (para. 2) and Article 152, with reference to Article 279 (para. 5) of the Family Act. Maintenance between (former) spouses is a personal and property relationship arising from the conclusion and termination of marriage. For more on the maintenance between spouses, see: Kovaček Stanić, 2014: 109–112, and Počuča, Šarkić, 2014: 276–280.

³ For the purpose of this paper, word “partners” will refer both to spouses and extramarital partners.

⁴ Pursuant to Article 151 of the Family Act, a spouse (maintenance creditor) who lacks sufficient means of support, and who is unable to work or is unemployed, has the right to maintenance (spousal support) in proportion to the (financial) capacities of the other spouse (maintenance debtor), provided that the maintenance obligation would not represent a manifest injustice for the maintenance debtor upon examining the merits of each individual case. For more on the substantive conditions for exercising the right to maintenance between partners, see: Kovaček Stanić, 2014: 112–114, Draškić, 2011: 379–384, Ponjavić, 2011: 324–325, Panov, 2010: 302–306, Cvejić Jančić, 2009: 122–129.

⁵ Whenever the maintenance-related facts and circumstances are changed, either for the maintenance creditor or for the maintenance debtor, the maintenance amount may be changed or terminated. The law limits the duration of maintenance between former spouses up to five years from the termination of marriage, which can be extended only exceptionally. The same restriction applies to the duration of maintenance between former extramarital partners (Articles 163 and 164 of the FA). See also: Ponjavić, 2011: 332, Panov, 2010: 307–308.

⁶ The rules of litigation procedure are modified to meet the needs of maintenance litigation. The rules of special litigation procedure are regulated in Articles 201–208 and Articles 279–282 of the FA, with subsidiary application of the litigation procedure rules envisaged in the Civil Procedure Act. For more on the special litigation procedure, see: Mandić, 1991: 67–74.

⁷ Article 280 of the FA stipulates that the first hearing is to be scheduled to take place within 8 days from the date the lawsuit was filed with the competent court, whereas the second instance court is obliged to deliver a decision within 15 days from the date of submitting the appeal.

⁸ Article 279 (paras. 2 and 3) of the FA regulates that a maintenance claim may be raised until the conclusion of the main trial hearing in proceedings for dissolution or annulment of marriage. Exceptionally, the maintenance lawsuit may be filed no later than one year from the day of the termination of marriage, or from the day when the last factual payment for support was made, if the ex-spouse had justified reasons not to raise a maintenance claim in proceedings for dissolution or annulment of marriage. It follows that the maintenance litigation, as a rule, is

The effectiveness of the regulated legal mechanism is indicated by the accomplished legal protection in a specific court proceeding. This paper aims to present the results of the empirical research on maintenance litigation proceedings conducted before the Basic Court in Niš, for the purpose of gaining an insight into the performance quality of the legal mechanism for exercising the right to maintenance between married and unmarried partners. Furthermore, special attention has been given to the financial aspect of conducting maintenance litigation proceedings because the eventual obstacles in this area can jeopardize the right of access to court.⁹ The provisions of the Civil Procedure Act¹⁰ and Free Legal Aid Act¹¹ provide support for exercising the right of access to court.

2. SUBJECT MATTER AND DESCRIPTION OF THE RESEARCH

The research included maintenance litigation proceedings between married and unmarried partners conducted (both as the main proceedings and as ancillary proceedings) before the Basic Court in Niš and finalized during the year 2018. The subject matter of the research were the records of court cases formed in proceedings for establishing or varying the maintenance amount, terminating maintenance, or extending the duration of maintenance between married or unmarried, current or former partners. The research sample comprised records of 12 cases from the database of the Basic Court in Niš.¹² Individual records of cases in the research sample were inspected and the data were collected about the litigants (maintenance creditor and maintenance debtor), the maintenance claim, and the course of litigation proceedings.¹³

conducted as an ancillary proceeding, alongside with the marital dispute proceeding, and only exceptionally as the main proceeding, if the ex-spouse could not file a request for maintenance in the marital dispute proceeding for justified reasons.

⁹ As the right to a fair trial can be exercised only if the legal entity actually seeks judicial protection from the court, the right to access a court is a precondition for exercising the right to a fair trial. It is the duty of the state to regulate civil procedure so as to ensure that no one is prevented by economic obstacles in their efforts to exercise or defend their right before a court (Petrušić, 2007: 162, 176.)

¹⁰ The Civil Procedure Act regulates the possibility of exemption from the previous payment of procedure costs, as well as the possibility of appointing a free proxy (Articles 151 and 170 of the Civil Procedure Act, *Official Gazette RS*, 72/2011, 49/2013, 74/2013, 55/2014, 87/2018, 18/2020).

¹¹ Free legal aid entails legal advice, drafting submissions, legal representation and legal defense; it is provided by lawyers and legal aid services in local governments (Articles 6 and 9 of the Free Legal Aid Act, *Official Gazette RS*, 87/2018). This Act came into force in 2018, but its implementation was postponed until 1.10.2019.

¹² Following the set criteria for the formation of the research sample, court cases were identified after the review of the electronic records of litigation case law of the Basic Court in Niš. When collecting data, the researcher encountered the problem of inaccuracy of those electronic records; namely, when entering data, it is possible to choose a data category (e.g. maintenance between spouses, maintenance between extramarital partners, maintenance between other persons, etc.) but in most cases the data were entered under one category, without respecting other differential category (e.g. data for maintenance between spouses or between extramarital partners were grouped in the category of maintenance between other persons). In a vast number of cases, electronic records failed to show data on the existence and type of partnership between the parties in a maintenance proceeding, thus making it necessary to review the paper records of all selected cases to identify a particular case as a subject matter of research. After reviewing a total of 626 cases, it was established that only 12 cases met the research criteria: P2 1250/15, P2 322/16, P2 511/16, P2 606/16, P2 1388/16, P2 405/17, P2 646/17, P2 903/17, P2 1271/17, P2 319/18, P2 949/18, and P2 970/18.

¹³ The process of inspecting the case records included examining the lawsuit content: the complaint and possibly the counter-claim, the litigants' submissions, the minutes from the main court hearing, the official notes of the acting judges, court decisions and appeals. Using the content analysis method, the gathered data were entered into tailor-made questionnaires.

3. RESEARCH RESULTS AND THEIR INTERPRETATION

Out of 12 cases in the research sample, only 10 cases involved litigation proceedings for establishing maintenance. Out of this number, only four proceedings were conducted as ancillary proceedings, within divorce proceedings. The statement of claim for maintenance was adopted in only one case, while it was dismissed in five other cases. In other proceedings, the court rendered a decision that the complaint was either withdrawn or considered withdrawn.

Only one claim was raised for varying the previously determined maintenance amount, but the plaintiff withdrew the complaint before the first hearing for the main trial. The statement of claim of the maintenance debtor was adopted in one claim raised for the termination of previously determined maintenance. In the research sample, there was no case for extending the duration of maintenance.

3.1. The Maintenance Creditor Profile

Out of 12 cases in total, the maintenance creditor was a woman in 75% of the cases and a man in the remaining 25% of the cases (Table 1)¹⁴. Such a gender structure of maintenance creditors is similar to the results of a formerly conducted research on the post-divorce maintenance between spouses conducted by examining the case law of the Basic Court in Prokuplje (Rakić, 2018: 43). Namely, in that research, the creditor was a woman in 80% of the cases. These findings warn us about the present economic dependence or, at least, the economic vulnerability of women in the 21st century living communities in the territories of the courts whose case law has been subject to research.¹⁵

Table 1 Gender structure of maintenance creditors

Gender	Number of maint. creditors	Percentage out of 12
Female	9	75%
Male	3	25%

The dominant age group of the maintenance creditors was over 59 (50%), followed by 42% of the creditors falling into the 39-58 age group (Table 2). The largest percentage of maintenance creditors (67%) resided in urban areas, while only 25% of them resided in rural areas (Table 3). Although there is a much smaller number of maintenance creditors in rural areas, these data in the research sample do not indicate a more stable economic position of spouses in villages. On the contrary, these data are more likely a consequence of the low level of awareness of the legal protection mechanisms in rural areas.

The education level of maintenance creditors was unknown in 75% of the cases; in the remaining 25%, the creditors had secondary school education (Table 4). It may be interesting to note that the earlier research in the Basic Court in Prokuplje revealed that 85% of the creditors had secondary school education (Rakić, 2018: 44). Taking into account the investigating principle in litigation proceedings, such a significant percentage

¹⁴ All tables in this paper were prepared by the author on the basis of data compiled from maintenance lawsuit cases conducted before the Basic Court in Niš and finished during the year 2018.

¹⁵ For territories falling under the jurisdiction of the basic courts of Niš and Prokuplje, see Article 3 of the Act on Registered Seats and Territories of Courts and Public Prosecutor's Offices, *Official Gazette RS*, 101/2013.

of unknown data could have been avoided by the judge's initiative aimed at collecting such data.¹⁶

Table 2 Age structure of maintenance creditors

Age range	Number of maint. creditors	Percentage out of 12
Up to 18 years old	-	-
19–38 years old	-	-
39–58 years old	5	42%
Older than 59 years	6	50%
Unknown	1	8%

Table 3 Domicile of maintenance creditors

Domicile	Number of maint. creditors	Percentage out of 12
Countryside	3	25%
City	8	67%
Unknown	1	8%

Table 4 Education of maintenance creditors

Level of education	Number of maint. creditors	Percentage out of 12
Elementary education	-	-
Secondary education	3	25%
Higher education	-	-
Unknown	9	75%

The maintenance creditor was unemployed in nine cases (75%), in two of which the creditors reported never being employed. In only two cases, the creditors were an employee and a pensioner (Table 5). Bearing in mind that the creditor's unemployment was a statutory requirement for exercising the right to maintenance, such results were expected. Irrespective to the employment status, general data on the occupation of maintenance creditors were available only in four cases (driver, seller, tailor, cleaning person at private households). Considering the significant percentage of unemployed creditors, general data on the occupation of the maintenance creditors were unjustifiably missing.

Table 5 Employment status of maintenance creditors

Employment status	Number of maint. creditors	Percentage out of 12
Employed	1	8%
Unemployed	9	75%
Retired	1	8%
Unknown	1	8%

¹⁶ Article 151 of the FA stipulates a spouse who lacks sufficient means of support, and who is unable to work or is unemployed, has the right to maintenance (spousal support). When assessing incapability to work, the court takes into account one's work capacity in terms of education and former occupations. In that context, data about one's educational level and former occupation may be a useful indicator for assessing whether the requirements for determining maintenance have been met. See: Panov, 2010: 302. Cvejić Jančić, 2009: 123.

Although they do not (directly) constitute features of the maintenance creditors profile, it is important to keep in mind the data on the existence of common children and the duration of marital/extramarital union. In eight cases, the maintenance creditor and debtor had common children; in five cases, the partners had two common children (per couple); in three cases, they had one common child (per couple).¹⁷ In the remaining cases, such data were unknown. Irrespective of whether the litigation proceeding was conducted between spouses or former spouses, marriage between the maintenance creditor and debtor lasted over 20 years in seven cases, and 18 years in one case.¹⁸ In the remaining cases, such data were unknown. The data on duration of extramarital community of the maintenance creditor and debtor were also unknown.

3.2. The Maintenance Debtor Profile

Considering the heterosexuality as a characteristic of marital/extramarital communities in the national law, the gender structure of maintenance debtors (75% male, 25% female) is directly opposite to the gender structure of the maintenance creditors. In six cases (50%), the maintenance debtor was in the age group over 59; in four cases (33%), he/she was in the 39-58 age group; in all other cases, the maintenance debtor was over 50 (17%). The similarity between age structures of the maintenance creditors and debtors in the research sample indicates a slight difference in the age between partners. The data on residence of the maintenance debtors are identical to those of the maintenance creditors: 67% in urban areas and 25% in rural areas.

Table 6 Education of maintenance debtors

Employment status	Number of maint. creditors	Percentage out of 12
Elementary education	-	-
Secondary education	2	17%
Higher education	1	8%
Unknown	9	75%

The data on the education level of the maintenance debtors are similar to the data on the maintenance creditors: in 17% of the cases, the maintenance debtor had a high school education; only 8% of maintenance debtors had higher (college) education; in 75% of cases, the educational level of maintenance debtors remained unknown (Table 6). The lack of a more significant percentage of known data on the education level of maintenance debtors is only justified in cases where maintenance complaint was withdrawn or is considered withdrawn, provided the parties are not heard at the main trial. Education level is an important indicator for the circle of jobs that may be available to the maintenance debtor.¹⁹

¹⁷ Only in one case, the maintenance creditor claimed spousal support and children's maintenance (as their legal representative) but during the proceedings the creditor withdrew the claim on the children's maintenance.

¹⁸ Counting from the moment of entering into marriage to the moment of finality of the divorce judgment (in five out of seven cases), or to the moment of finality of the judgment adjudicating the application for spousal maintenance (in two out of seven cases), while the marriage is still ongoing.

¹⁹ Under Article 151 of the FA, the maintenance is established in proportion to the other spouse's capacity to provide support. When assessing the maintenance debtor's capacity, the court takes into account all the circumstances that could be significant for determining the debtor's income, including the actual income and the income likely to be obtained by the maintenance debtor in regular circumstances (Draškić, 2011: 384).

As for the employment status, 75% of the maintenance debtors had regular income: in 50% of the cases, they were employed; in 25% of the cases, they were pensioners. In 8% of the cases, maintenance debtors were unemployed; the remaining 17% of cases contained no information on the debtor's employment status (Table 7). Despite the investigating powers of a judge in special litigation proceedings, the maintenance creditor should provide (or at least attempt to provide) any information on the maintenance debtor's employment, since it is a basic information affecting the establishment of maintenance. Irrespective to the employment status, the data on occupation of the maintenance debtor were only known in five cases (driver, medical professional, and tailor). In more than half of the cases the data on occupation were unknown, which seems unjustified considering the significant percentage of (un)employment data.

Table 7 Employment status of maintenance debtors

Employment status	Number of maint. creditors	Percentage out of 12
Employed	6	50%
Unemployed	1	8%
Retired	3	25%
Unknown	2	17%

3.3. Characteristics of Maintenance Litigation Proceedings

In litigation proceedings for establishing maintenance which are **conducted as main proceedings**, maintenance disputes between spouses were resolved during marriage (in 33% of cases)²⁰ and after the termination of marriage (in 50% of cases); maintenance disputes between extramarital partners were resolved in one case only (Table 8).

Table 8 Litigations for determining maintenance conducted as main proceedings

Maintenance litigations	Number of cases	Percentage out of 6
Maintenance between spouses	2	33%
Living community is ongoing	2	33%
Living community was previously disrupted	-	-
Maintenance between former spouses	3	50%
Marriage was dissolved during the maintenance litigation	3	50%
Marriage was dissolved before the maintenance litigation	-	-
Maintenance between extramarital partners	1	17%
Maintenance between former extramarital partners	-	-

In maintenance lawsuits which are **conducted as ancillary proceedings** to the divorce proceeding, the maintenance claim was raised by the maintenance creditor in the divorce lawsuit (in 25% of the cases) or in the counter-claim (in 75% of the cases) when the divorce lawsuit was filed by the maintenance debtor (Table 9).

²⁰ The results of prior research indicated the stance taken in judicial practice that the spouses could not exercise the right to maintenance (spousal support) in court proceedings in case the marriage was still ongoing (Petrušić, Konstantinović Vilić, 2012: 22). Having in mind the statutory provisions on the spouses' rights and duties to provide support, such a stance must be subjected to criticism. Otherwise, maintenance between spouses would be turned into a natural obligation, which does not correspond to the nature of legal support.

Table 9 Litigations for determining maintenance conducted as ancillary proceedings

Timing of raising the maintenance claims in proceedings	Number of cases	Percentage out of 4
Maintenance claim was raised in a marital dispute lawsuit	1	25%
Maintenance claim was raised within a complaint	1	25%
Maintenance claim was raised during the proceeding	-	-
Maintenance claim was raised in a counter-claim	3	75%

As for the type of relationship between litigants, the maintenance disputes between spouses were resolved in 17% of the cases, while disputes between former spouses were resolved in 75% of the cases. The maintenance disputes between extramarital partners were resolved just in 8% of the cases. In the research sample, there were no maintenance lawsuits between former extramarital partners (Table 10).

Table 10 Type of relation between litigants

Relation	Number of cases	Percentage out of 12
Spouses	2	17%
Former spouses	9	75%
Extramarital partners	1	8%
Former extramarital partners	-	-

3.4. Outcomes of Maintenance Litigation Proceedings

Out of 12 maintenance proceedings in the research sample, the plaintiff withdrew the maintenance complaint in three proceedings, while the complaint was considered withdrawn in two proceedings. The statement of claim was dismissed in five cases, and it was adopted only in two cases.

In two of the three cases where the **complaint was withdrawn**, insufficient financial assets for lawyer representation were stipulated as reason for withdrawal. It opens the issue of a ratio between the parties' economic (in)capacity and the lawyer services' tariff. The reasons for non-appearance of the duly summoned litigants at the trial proceeding were not known but there were no appeals against the decision that the **complaint was considered withdrawn**.

The court judgments on **dismissal of the statement of claim** were based on various reasons. The most common reasons for dismissal were: the maintenance creditor's work capacity which has been preserved to an appropriate degree to ensure independent means of earning; the maintenance creditor's employment; and care about common children by the maintenance debtor. In the decision-making process, the court assessed whether there were specific circumstances that would constitute a manifest injustice to the maintenance debtor. Notably, in the rationale of two judgments, the court pointed out that, although the maintenance creditors had no regular income of their own, they lived with their parents or adult children who supported or could support the maintenance creditor. Observed in isolation, the presented stance of the court must be criticized as being contrary to the statutory provision which stipulates that the spouse exercises the right to maintenance primarily from the other spouse (Article 166 of the FA).

The **statement of claims** for establishing maintenance **was adopted** only in one case. Although the plaintiff was unemployed and had no sufficient means for maintenance, the Court highlighted that there was a real possibility for the plaintiff to independently provide

some financial means, but in an insufficient amount. Therefore, having established the maintenance debtor's capacity to provide support, the court partly adopted the plaintiff's statement of claims, in the amount less than required.

Acting upon a claim submitted by the maintenance debtor, the court established the **termination of maintenance obligation** due to the changed circumstances on the side of the maintenance creditor who meanwhile had exercised his/her right to a disability pension which provided for the maintenance creditor's needs.

An appeal against the first instance judgment was filed in three cases. The second instance court rejected the appeals in all three cases and upheld the first-instance judgments.

3.5. Costs of Maintenance Litigation Proceedings

In two cases only, the plaintiffs were released from a prior payment of court fees; in one case, the decision was not made upon the plaintiff's application.²¹ No application was filed for prior exemption from payment of costs, nor were there any motions for appointing a legal representative free of charge (in accordance with Articles 168 and 170 of the FA).

The decision on the litigation costs depends on the outcome of litigation proceedings. The losing party shall reimburse the costs to the opposing party but, in case of partial success in litigation, the court may order each party to bear its own costs or order one party to reimburse the other party a proportional amount of the costs (Article 153 of the CPA). Given that the court can also base its decision on reasons of fairness, drawing qualitative conclusions about the litigation costs is extremely limited. Referring to the research sample, we may highlight that the court ordered the losing party to pay the litigation costs in 50% of the cases, basing the decision either on the other party's success in litigation or on reasons of fairness; in 25% of the cases, the court decided that each party was to bear its own expenses. Finally, in 25% of the cases, the litigants did not claim reimbursement for the litigation costs (Table 11).

Table 11 Costs of litigation

Decision on the costs of litigation	Number of cases	Percentage out of 12
The losing party pays the costs to the other party.	6	50%
Each party bears its own costs	3	25%
No claim for costs was raised	3	25%

The awarded costs for the litigation proceedings ranged from 6,000 RSD to 90,000 RSD.²² Bearing in mind lawyer services' tariffs, such amounts do not seem unusually high.²³ In four cases, both litigating parties had legal representatives; in three cases, neither party had a lawyer. In the remaining five cases, only one litigant was represented by a lawyer.

²¹ In that case, the decision to consider the complaint withdrawn was made at the first hearing for the main trial.

²² The costs of litigation proceeding included the costs of representation by a lawyer at the held and adjourned hearings for the main trial, the costs of expertise, and court fees.

²³ According to Tariff No. 3 of the Tariff for Lawyer Fees and Rewards (*Official Gazette of RS*, 121/2012 and 99/2020), the amount of 6,000.00 RSD is the fee for drawing up a motion in litigation cases where the subject matter dispute value is up to 450,000.00 RSD; the fee for legal representation at the held hearing is 7,500.00 RSD and the fee for legal representation (appearance) at the adjourned hearing is 4,500.00 RSD. Generally speaking, court fees are calculated according to the designated value of the subject matter of the dispute and in compliance with the Court Fees Act (*Official Gazette of RS*, 28/94, 53/95, 16/97, 34/2001, 9/2002, 29/2004, 61/2005, 116/2008, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015 and 95/2018).

3.6. Duration of Maintenance Litigation Proceedings

Six litigation proceedings in the research sample were completed within a 9-month period, while the remaining six proceedings lasted from 15 to 30 months. The longest lawsuit took 30 months and the shortest lawsuit took two months. The common reasons for the length of litigation proceedings lie within the time range between scheduling two hearings, the number of hearings held, and the re-opening of the main trial due to replacement of the acting judge. Considering the principle of particular urgency in maintenance litigation proceedings, the stated results offer valid reasons to question the efficiency of providing legal aid in the maintenance litigation proceedings observed in the research.

In seven cases, the first hearing for the main trial was held in the period from 75 to 136 days after the date of filing the complaint with the Court. In one case, the plaintiff withdrew the complaint before the first hearing for the main trial was scheduled; the complaint was withdrawn 25 days after it had been submitted to the Court. The research results lead to the indisputable conclusion that in none of the proceedings was the first hearing held within the statutory eight-day time limit from the date of submitting the maintenance claim to the Court (Article 280 of the FA).

On the basis of the available data in the research sample, it was not possible to establish the period of time from the receipt of the appeal in a second-instance court to the time of delivering the second-instance decision.

4. CONCLUDING REMARKS AND CONSIDERATIONS

Bearing in mind the research sample, the research conclusions refer to the case law of the Basic Court of Niš in maintenance litigation proceedings that were finished during the year 2018. The presented results aim to provide the basis for future research in this area and promote the efficiency of legal protection in maintenance litigations.

The profile of an average maintenance creditor in the research sample reveals the following features: it is a woman, over the age of 50, residing in town, of secondary school education level, an unemployed blue-collar worker, who is requesting maintenance after more than 20 years of marriage with the maintenance debtor. The profile of an average maintenance debtor reveals the following features: it is a man, over the age of 50, residing in town, of secondary school education level, employed, and a blue-collar worker.

The highest number of maintenance proceedings in the research sample (84%) referred to litigations for establishing maintenance. In the majority of cases, maintenance lawsuits were conducted as the main proceedings; a small number of ancillary proceedings were mainly initiated by a counter-claim for establishing maintenance in divorce litigation.

In comparison to previous research results, the common outcome of maintenance lawsuits between spouses (conducted while the marital community was still ongoing) was the adoption of the statement of maintenance claim. The highest percentage of litigation disputes were resolved between former spouses (75%), followed by the disputes between spouses (17%), and then between extramarital partners (8%). In the research sample, there were no litigations between former extramarital partners, which may be the result of the citizens' insufficient awareness of such rights.

In 42% of litigation proceedings for establishing maintenance, the statement of maintenance claim was dismissed, and it was adopted only in 8% of the cases. In 42% of the proceedings, the Basic Court in Niš rendered a decision that the complaint was

withdrawn or was considered to be withdrawn. In most cases, the reason for withdrawing the complaint was of a financial nature, which raises the issue of exercising the right of access to court. The withdrawal of complaints also indicates the citizens' insufficient awareness of the opportunities stipulated in the Civil Procedure Act; referring to the research sample, this conclusion may be supported by the fact that no litigant filed an application for prior exemption from payment of litigation costs, that there were no motions for appointing a legal representative free of charge, and that the application for prior exemption from payment of court fees was filed only in three cases.

Considering the investigating principle applicable in maintenance litigation proceedings, the percentage of cases where one party had legal representation (42%) or where neither party had a lawyer (25%) is significant but it does not pose a threat to exercising quality legal protection. However, the stated percentages may lead to a conclusion that the tariff for lawyer services fees is sometimes a deterrent factor for instigating litigation proceedings, which directly depends on the economic power of citizens.

The research results show that the principle of particular urgency was not accomplished in court proceedings, given that the lawsuits in the research sample lasted from six months to 30 months. In none of the cases was the first hearing scheduled within the statutory time limit of eight days from the date of filing a complaint with the Court. Notably, in one case, the first hearing was held 136 days after filing the complaint with the Court.

The existential nature of the need to exercise the right to maintenance calls for an effective and timely legal aid. Bearing in mind the latent obstacles for accessing the court and lengthy judicial proceedings, the fair trial standards are not fully implemented in the maintenance lawsuits observed in the research sample.

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OSTVARIVANJE PRAVA NA IZDRŽAVANJE IZMEĐU BRAČNIH I VANBRAČNIH PARTNERA U PRAKSI OSNOVNOG SUDA U NIŠU

Zakonom je regulisano pravo na izdržavanje između supružnika i između vanbračnih partnera, uslovi pod kojima se ono može ostvariti, kao i poseban parnični postupak za sudsko ostvarivanje prava na izdržavanje. Egzistencijalni značaj prava na izdržavanja ukazuje na nužnost provere kvaliteta funkcionisanja uspostavljenog pravnog mehanizma radi ostvarivanja ovog prava. Stoga je autor sproveo istraživanje o parnicama za izdržavanje pred Osnovnim sudom u Nišu, koje su pravosnažno okončane u toku 2018. godine. U radu autor predstavlja i analizira rezultate istraživanja u parničnim postupcima u parnicama za određivanje, promenu visine, prestanak ili produžetak trajanja izdržavanja, između bračnih ili vanbračnih partnera. Cilj istraživanja bilo je sticanje uvida u adekvatnost primene zakonskih propisa u praksi i stepen efikasnosti pružanja pravne zaštite u analiziranim parnicama za izdržavanje. Rezultati istraživanja otkrivaju neefikasnost postupaka u parnicama za izdržavanje i ozbiljnu neinformisanost građanstva o procesnim mogućnostima u parnicama za izdržavanje.

Ključne reči: poverilac izdržavanja, dužnik izdržavanja, bračni i vanbračni partneri, parnice za izdržavanje, trajanje parničnog postupka