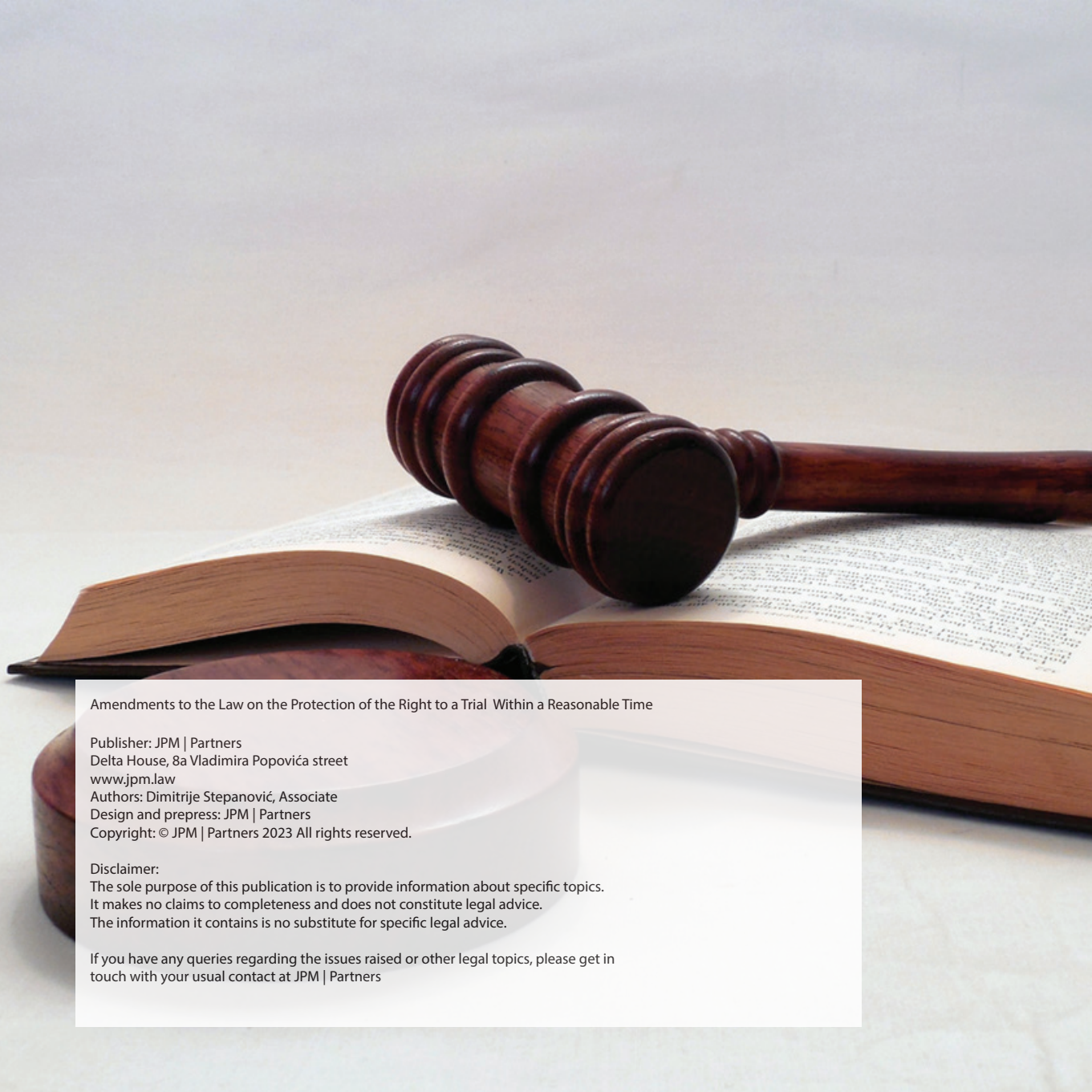




**AMENDMENTS TO THE LAW ON THE PROTECTION
OF THE RIGHT TO A TRIAL
WITHIN A REASONABLE TIME**

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Amendments to the Law on the Protection of the Right to a Trial Within a Reasonable Time

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Authors: Dimitrije Stepanović, Associate
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On October 26, 2023, the National Assembly of the Republic of Serbia passed new amendments to the Law on the Protection of the Right to a Fair Trial (hereafter referred to as the “Law”), which were published in the Official Gazette of the Republic of Serbia No. 92/2023.

These amendments to the law introduced innovations pertaining to the procedures that it applies to concerning legal remedies used in the process of safeguarding the right to a fair trial within a reasonable timeframe, as well as the procedural rules of the protection procedure itself.

The amendments were put under the influence of the European Court of Human Rights and the Committee of Ministers of the Council of Europe. The European Court of Human Rights has consistently expressed its stance against the Republic of Serbia, stating that amendments to the Law on the Protection of the Right to a Trial within a Reasonable Time are necessary to more effectively implement the judicial protection procedure for the right to a trial within a reasonable time in bankruptcy and enforcement proceedings for the settlement of recognized or determined claims in which the bankruptcy or enforcement debtor is a company with majority social or state capital.

Existing legal remedies for the protection of the right to a trial within a reasonable time in these proceedings, such as objection to speeding up the proceedings, appeal against the decision to reject the objection, lawsuits for monetary compensation, and lawsuits for compensation for property damage, have proven insufficiently effective. The European Court of Human Rights made various decisions based on numerous applications lodged against the Republic of Serbia in this group of cases.

The first case in this group was *Kačapor and Others v. Serbia*, filed on July 7, 2008, involving several applicants with similar complaints about violations of their rights under Articles 6 and 13 of the European Convention on Human Rights.

The case established the practice of protecting the right to a fair trial under Article 6 and the right to an effective remedy under Article 13 of the Convention. The Court ruled that the provision of Article 13 guarantees an effective remedy before national authorities for violations of rights under Article 6, including the right to a trial within a reasonable time and property rights under Article 1 of Protocol No. 1.

The Court found that the Republic of Serbia was responsible for the payment of outstanding liabilities of social enterprises, regardless of whether they were predominantly owned by social capital or fully owned by the state. The Court also stated that it is the state's obligation to ensure that decisions against its bodies, entities, or companies are enforced in due time and that a lack of funds cannot be used as an excuse for not enforcing them.

The new amendment to the law, influenced by the European Court's views and the Committee of Ministers' recommendations, removes the application of the law in enforcement and bankruptcy proceedings involving state or socially owned companies. Furthermore, the amendment designated an objection aimed at expediting these proceedings as constitutional appeals.

A wooden gavel and a green alarm clock are positioned on a wooden surface. The gavel is in the foreground, and the clock is in the background, both slightly out of focus. The background is a warm, brownish-red color.

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These amendments, although regulating situations that have not been envisaged so far, leave many doubts as to whether the provisions concerning the national legal remedy will, in fact, enable the parties to exercise their rights in those proceedings in a timely manner,

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The benefits of these legal provisions lie in the fact that they establish a single nationwide legal avenue for the aforementioned cases, thereby reducing the workload on already overburdened courts, particularly basic and commercial courts. This enables courts to focus more effectively on resolving other cases.

However, the creation of a unified national legal remedy does not guarantee the efficiency or promptness of the rights asserted in the field's constitutional appeal. Moreover, there is a possibility that this may lead to an increase in the workload of the Constitutional Court, given that the number of cases to be decided by the court is expected to rise significantly.

In addition, amendments to the law have introduced new grounds for appeal. Specifically, an appeal can now be filed if the court president, in a ruling granting the objection and recognizing a violation of the right to a trial within a reasonable time, fails to set a deadline for taking procedural actions that would expedite the proceedings.

This additional protection ensures that the rights of parties are safeguarded in situations where the court president fails to take necessary actions, preventing the party from exercising its rights in a timely manner.

It should also be noted that the law denies the right to re-file a lawsuit for compensation for property damage by stipulating that “a creditor who has been awarded and paid compensation for property damage in the amount of claimed receivable has no right to file a new objection in proceedings conducted to collect the same claim”. Although this provision can be considered justified to reduce the number of cases decided by courts, parties are denied the possibility of re-filing a lawsuit due to further delays in proceedings in the same case.

Finally, innovations regarding the appeal filed against the decision to reject the objection to speed up the abovementioned enforcement and bankruptcy proceedings. Specifically, if a decision on the appeal has not been issued by the date of entry into force of the law, that appeal will be considered a constitutional appeal that also applies to lawsuits for monetary compensation and lawsuits for compensation for property damage.

In this way, amendments to the law have given greater significance to the procedure for protecting the right to a trial within a reasonable time, and the constitutionally guaranteed right to a fair trial (Article 32 of the Constitution of the Republic of Serbia) has been made specific by granting significant powers to the Constitutional Court.

In view of the above, the above-mentioned amendments to the law, although regulating situations that have not been envisaged so far, leave many doubts as to whether the provisions concerning the national legal remedy will, in fact, enable the parties to exercise their rights in those proceedings in a timely manner, or whether the practice will show that these amendments do not resolve the problem faced by parties in collecting their claims against the enforcement/bankruptcy debtor.

Author



Dimitrije Stepanović

Associate

E: dimitrije.stepanovic@jpm.law

JPM | PARTNERS

8a Vladimira Popovića,

DELTA HOUSE, V Floor

11070 Belgrade, Serbia

T: +381/11/207-6850

E: office@jpm.law

www.jpm.law