JUDICIAL PROCEEDINGS

1.20

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.	2012			√
Improve and justify the allocation of cases among courts and judges.	2011			√
Enactment of new amendments to the Law on Civil Procedure in order to assure flexibility of the timeframe and deadlines for certain actions.	2011			√
Concepts that allow for delay of procedure, such as postponement and restitution in integrum, have to be restrictively interpreted and implemented.	2016			√
Consensus on the cases arising under Article 204 of the Law on Civil Procedure.	2018		√	

CURRENT SITUATION

During 2018 and in the first quarter of 2019 the legal framework for judicial proceedings was not significantly changed, nor were there important legislative reforms that would affect judicial proceedings in the Republic of Serbia.

Important institutions and changes in the legal system, such as public bailiffs, notaries public, a new organizational scheme of courts, and the regulation of the right to a trial within a reasonable time, have already been legally established and are functioning on a stable basis.

The Law on Civil Procedure (RS Official Gazette Nos. 72/2011, 49/2013, along with the Decision of the Constitutional Court 74/2013 and the Decision of the Constitutional Court 55/2014 and 87/2018) now applies to a substantial number of active judicial proceedings, so there is not a significant number of active judicial proceedings to which the previous Law applies. The latest amendments to the Law on Civil Procedure, adopted in 2018, concerned exclusively paragraphs 2 and 3 of Article 204 of the Law on Civil Procedure (the article of the law that regulates the disposal of assets or rights under litigation), while other provisions of the Law on Civil Procedure were not amended in any way.

The Law on Enforcement and Security (RS Official Gazette No 106/2015 and 106/2016 - authentic interpretation and 113/2017- authentic interpretation) has firstly been changed with a new authentic interpretation of the National Assembly was issued at the end of 2017, clarifying the application of the disputed Article 48 of the Law and explaining the meaning and purpose of the concept of "transfer" of claims. More substantive amendments of the Law on Enforcement and Security were introduced in the second half of 2019 when the Law on amendment of Law on Enforcement and Security ("RS Official Gazette", no. 54/2019) came into force although most of its provisions will become applicable only on 01 January 2020 (while the provisions on electronic public bidding will only becoming applicable in March/ September 2020). Envisaged amendments of the Law on Enforcement and Security are numerous and are intended to remove irregularities that occur in practice of enforcement proceedings, accelerate the enforcement procedure and introduce further possibilities for voluntary execution of the obligations.

The number of courts established by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices (RS Official Gazette No 101/2013) from 1 January 2014 remains unchanged, so there are 66 basic courts, 44 misdemeanour courts, 25 high courts, 16 commercial courts and 4 appellate courts.

The Law on the Protection of the Right to Trial within a Reasonable Time (RS Official Gazette No 40/2015), which entered into force on 1 January 2016, is increasingly applied in practice, having in mind that courts are still overburdened with cases, especially in civil litigation, which often leads to breaches of adjudication deadlines.

Dispute Resolution

Certain provisions of the Law on Civil Procedure, such as simplified rules on the service of court documents, the shortening of the evidence-producing procedure, the equal treatment of the parties (i.e. setting the same deadline for the submission of and response to the legal remedy), the expansion of the circle of representatives of par-

ties in proceedings, and the reduction of the threshold for the submission of a review, were all met with positive reactions from courts and parties, and their application in practice is widespread. On the other hand, some of the solutions envisaged by this law have not been applied in practice even after several years of its implementation. Thus, subpoenas and other information are still not delivered by email, and the use of audio and video equipment in hearings is rare because courts are not adequately equipped.

Appellate courts do not comply with the deadlines for deciding on appeals. The new law requires setting a deadline to complete the main hearing (a concept aimed at ensuring that evidence is produced in a time-efficient manner), but in practice judges either fail to comply with the set timeframes or set unreasonably long timeframes, of two or more years.

In accordance with the Legal Practitioners Law, the Bar Academy has been introduced as a special body established by the Bar Association of Serbia, responsible for the professional education and specialization of attorneys and graduate lawyers, but its work so far has not been noteworthy. Ever since its establishment the Bar Academy has organized seminars only sporadically, but in the past year it has intensified its activities, primarily by organizing lectures and professional trainings for lawyers and law graduates, and today we can say that the situation has significantly improved.

POSITIVE DEVELOPMENTS

All courts in Serbia have established online databases showing the status of ongoing cases, which has facilitated access to information on the status of cases. The databases are regularly updated, so in most situations it is possible to promptly obtain information on the status of a case. From 2014, when the Commissioner for Information of Public Interest and Personal Data Protection banned any processing of data contrary to the Law on Personal Data Protection, database search by personal names of parties is no longer possible, and there are no signs that it will be introduced again.

Dispute Resolution

The Law on Civil Procedure was last substantially amended in 2014, when significant developments were introduced, such as the expansion of the possibility of filing a request for a revision as an extraordinary legal remedy by prescribing new situations where a revision is always allowed, as well as by reducing the threshold to EUR 40,000; i.e. up to EUR 100,000 for commercial disputes (amounts calculated according to the median exchange rate of the National Bank of Serbia (NBS) on the filing date of the lawsuit).

Enforcement

The new authentic interpretation of Article 48 of the Law on Enforcement and Security, issued by the National Assembly at the end of 2017, is a significant development in the application of this Law. According to the interpretation of the Parliament, the provisions of the Article 48 should be understood in a way that the legal term "transfer" of a claim or obligation also encompasses the assignment of a claim or obligation. The "transfer" of a claim or obligation has a general meaning and includes all sorts of successions of claims or obligations, irrespective of when the succession took place, during the legal entity's existence or after it has ceased to exist. Therefore, the "transfer" of a claim or obligation should be proven by a public or certified document, or, if this is not possible, a binding or final decision rendered in civil, misdemeanour or administrative proceedings.

In this way, the problem in practice has been finally resolved. Specifically, entities that used to buy claims, and subsequently initiate enforced collection proceedings, were facing problems when courts denied their enforcement motions because of the misinterpretation of the provisions of the Article 48 and because there was no uniform understanding of the concept of the "transfer" of claims.

Furthermore, the newly enacted Law on Amendments to the Law on Enforcement and Security ("RS Official Gazette", no. 54/2019) represents a regulation that was drafted with consultation of the legal practice and with the aim of allowing greater efficiency of the enforcement proceedings. Time will tell whether the application of the new provisions will indeed improve the conduct of the enforcement procedure.

REMAINING ISSUES

The specialization of the portfolio of judges should be introduced in an efficient and definitive manner. Also, case files should be made more accessible to all interested parties and the use of electronic means for recording or photographing the case file should be facilitated to save the courts' and parties' resources, respectively. The hearings should be set in shorter time periods, and the length of appellate proceedings in practice should be aligned with legal provisions.

Electronic communication between the parties and the court is still not possible due to the lack of clear regulations and by-laws in this field, as well as the lack of funds necessary for the technological equipment for the courts. The timeframe, although potentially very promising in terms of an efficient completion of litigation, is not flexible enough, since litigation is often unpredictable, and legal possibilities for extending deadlines are insufficient. On the other hand, judges either fail to comply with the timeframe or set unreasonably long timeframes, of two or even more years, which again contributes to the prolongation of proceedings and defeats the purpose of the concept of procedural timeframes. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict, which may lead to abuse by parties.

Article 204 of the Law on Civil Procedure, which provides the possibility to complete a litigation case between the same parties, if a party has disposed of an asset or right subject to litigation, has resulted in a progressive stance of the jurisprudence regarding the reversal of the claim by the assignor – according to which the respondent could be obliged to pay the assignee at the request of the claimant. However, such reasoning is not uniformly accepted by the entire jurisprudence, which leads to unequal treatment before the courts and legal uncertainty in terms of the rigid interpretation of the law, contrary to the jurisprudence in jurisdictions that have similar provisions in their legislation. Finally, even though Article 204was amended with the latest amendments of the Law on Civil Procedure, only time will show whether the envisaged amendments will lead to the resolution of the above-mentioned problem in the jurisprudence.

The concept of restitutio in integrum has been restored to the enforcement procedure system. The legislature has foreseen that restitutio in integrum is allowed only in the case of a failure to comply with the deadline for submitting an objection or appeal in the procedure of contesting the decision on enforcement based on a directly enforceable title. Although the scope of the application of this concept has been significantly narrowed, abuse of this concept can be reasonably expected. Also, it is not clear why the legislature has foreseen the application of this concept only in the enforcement procedure based on a directly enforceable title.

The Law on Enforcement and Security does not prescribe what happens with the paid advance costs in a situation where a creditor petitioning for enforcement based on an invoice or a promissory note has initiated litigation and lost. The current solution where the public bailiff keeps the entire amount of the advance, which in some cases may be extremely high, seems unsustainable.

Although the new Law explicitly stipulates that extraordinary legal remedies may not be used in the enforcement procedure, the Law itself has in fact introduced an extraordinary remedy in the enforcement procedure. In a situation where the decision dismissing an appeal is based on the facts which are disputed between the parties and which pertain to the claim itself, the enforcement debtor may initiate a litigation proceeding declaring the enforcement inadmissible within 30 days of receipt of the decision dismissing the appeal. Even though litigation will not postpone enforcement, it is a further procedural burden on the enforcement creditor.

As mentioned before, the concept of postponement has been restored to the enforcement procedure. Although the postponement of enforcement upon the request of the enforcement debtor is possible only once, it opens the door for malpractice as the criteria for the assessment of legal grounds for postponement is too broadly set, and there is a possibility that, in theory, the postponement could last for a longer period of time, depending on the public bailiff's assessment.

FIC RECOMMENDATIONS

- Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.
- Improve and justify the allocation of cases among courts and judges.

- Enactment of new amendments to the Law on Civil Procedure to assure flexibility of the timeframe and deadlines for certain actions.
- Concepts that allow for delay of procedure, such as postponement and restitutio in integrum, have to be restrictively interpreted and implemented.
- Consensus on the cases arising under Article 204 of the Law on Civil Procedure.

ARBITRATION PROCEEDINGS 1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The relationship between bankruptcy and arbitration proceedings should be clarified in the Bankruptcy Law.	2018		√	
Promote the possibilities and advantages of dispute resolution through arbitration by providing institutional support to the relevant governmental and non-governmental bodies as well as by instructing professional organizations and companies to accept the jurisdiction of local arbitration institutions.	2010			√
Develop a supportive legal framework for the activity of arbitration institutions in Serbia to ensure conditions for regional companies to accept its jurisdiction, subsequently creating a regional arbitration centre in Serbia.	2016			√

CURRENT SITUATION

The regulatory framework for arbitration proceedings in Serbia is comprised of the Law on Arbitration and the rules of two arbitral institutions, the Permanent Arbitration at the Chamber of Commerce and Industry of Serbia (CCIS) (effective from 30 June 2016) and the Belgrade Arbitration Centre (effective from 1 January 2014). Both arbitral institutions have the jurisdiction to settle any dispute eligible for arbitration, regardless of whether it is an international dispute or a domestic one.

The general impression is that arbitration is increasingly popular as a way of resolving commercial disputes. However, it is still mostly present in international business relations, where there is a traditional mistrust among foreign companies in the competence of domestic courts. On the other hand, domestic companies still believe that arbitration is rather expensive compared with courts. However, it is often disregarded that the lengthy court proceedings can be significantly more expensive than arbitration, where decisions are made faster in comparison to courts.

The Law on Arbitration, in force from 10 June 2006 in its original text, was drafted in accordance with international standards, based on the Model Law on the Arbitration of the UN Commission on International Trade Law from 1986. Given the implementation of the law so far, and the fact that Serbian courts rarely annul arbitration decisions, Serbia should be perceived as an attractive arbitration destination.

POSITIVE DEVELOPMENTS

Recently, the advance of arbitration in Serbia and other countries has been focused on the extension of the juris-

diction of arbitration, rather than the improvement of arbitration rules. In general, arbitration laws, as well as the rules of arbitration institutions, today have a satisfactory legal framework, and the professional community is primarily focused on a broader and more frequent use of arbitration as a dispute resolution mechanism.

Serbia has been following these trends, and in 2017 a positive step forward in regulating the relationship between bankruptcy and arbitration was made through amendments to the Bankruptcy Law. In particular, since 2009, it was unclear whether a creditor whose claim (the subject of an arbitration agreement) in bankruptcy proceedings is disputed can initiate or resume arbitration proceedings in order to determine the merits of the disputed claim. The Bankruptcy Law regulates the relation between arbitration and bankruptcy proceedings in Art. 117, which stipulates that the creditor whose claim is disputed shall initiate court proceedings, or resume suspended litigation or arbitration proceedings in order to determine the merits of the disputed claim, and Art. 118, which stipulates that the bankruptcy administrator shall take over civil or arbitration proceedings in the state in which they are at the time of opening the bankruptcy proceedings.

It is necessary to emphasise that the entire legal system that regulates the application of arbitration in the Republic of Serbia is modern and satisfactory.

REMAINING ISSUES

Amendments to the Bankruptcy Law in 2017, although representing a positive step forward in resolving the relationship between arbitration and bankruptcy proceedings, are still not sufficiently clear in the present form, and there are many controversial issues which will cause certain problems in practice.

Firstly, based on the provisions of Art. 117 and Art. 118 of the Law on Bankruptcy, it remains unclear whether creditors who did not initiate an arbitration before the opening of bankruptcy proceedings, in case of a disputed bankruptcy claim, can determine the merits of the claim through arbitration, or whether arbitration proceedings are available only to the creditor who initiated arbitration proceedings against the debtor prior to the initiation of bankruptcy proceedings. Also, there are interpretations according to which the creditor in this situation can choose between litigation and arbitration proceedings.

Also, the Bankruptcy Law does not regulate the following important issues for the relationship between arbitral and bankruptcy proceedings:

- there is no explicit requirement that the claimant in arbitration proceedings is obliged to change the claim, that is, to request declaratory claim instead of establishing a condemnatory claim (this requirement exists for litigation),
- the consequences of opening bankruptcy proceedings while there is an ongoing arbitration in which the bankruptcy debtor is the claimant are not regulated,
- it is not explicitly regulated that the opening of bankruptcy proceedings results in the termination of arbitration proceedings,
- it is not prescribed whether a bankruptcy administrator can conclude an arbitration agreement, and whether the board of creditors' consent would be required for concluding such an arbitration agreement.

Also, the efficiency of the current framework of the court procedure for the annulment of arbitral awards is questionable, as it is based on a two-step ruling process, first before the first instance court and then before the appellate court.

FIC RECOMMENDATIONS

- It is necessary to clarify the relationship between bankruptcy and arbitration proceedings in the Bankruptcy Law.
- Promote the possibilities and advantages of dispute resolution through arbitration by providing institutional support to the relevant governmental and non-governmental bodies as well as by instructing professional organizations and companies to accept the jurisdiction of local arbitration institutions.
- Develop a supportive legal framework for the activity of arbitration institutions in Serbia to ensure conditions for regional companies to accept its jurisdiction, subsequently creating a regional arbitration centre in Serbia.