

**PRINCIPLE OF  
EFFICIENCY  
OR PRINCIPLE OF  
ARGUMENTATION?**

**JPM**

JANKOVIĆ POPOVIĆ MITIĆ

#### **PRINCIPLE OF EFFICIENCY OR PRINCIPLE OF ARGUMENTATION?**

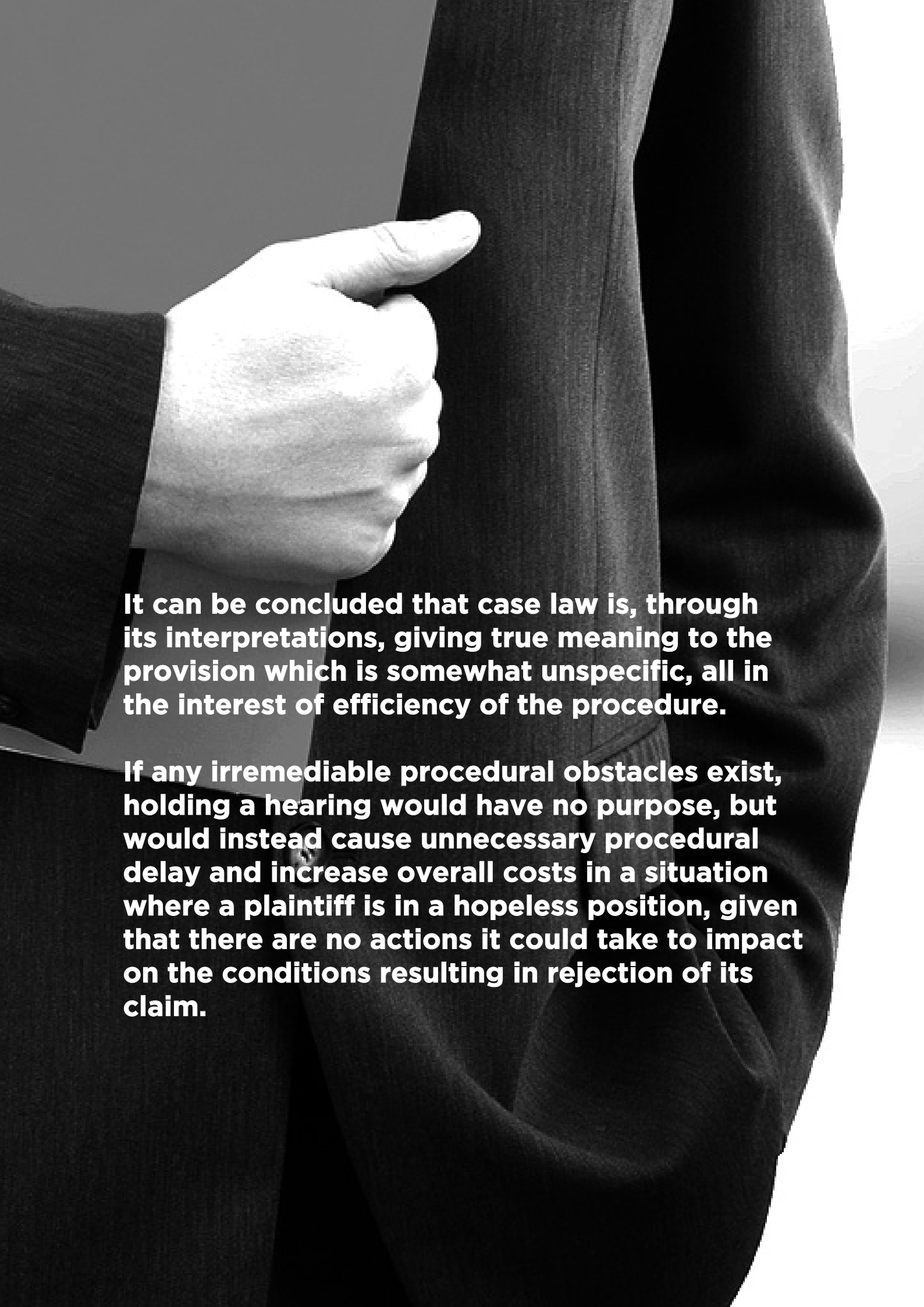
Publisher: JPM Janković Popović Mitić  
NBGP Apartments, 6 Vladimira Popovića street  
[www.jpm.rs](http://www.jpm.rs)

Author: Đorđe Novčić, Partner, Milica Zarkic, Associate and Katarina Zivkovic, Associate  
Design and prepress: JPM Janković Popović Mitić  
Copyright: © JPM Janković Popović Mitić 2017. All rights reserved.

#### **Disclaimer:**

The sole purpose of this publication is to provide information about specific topics.  
It makes no claims to completeness and does not constitute legal advice.  
The information it contains is no substitute for specific legal advice.

If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at JPM Jankovic Popovic Mitic.



**It can be concluded that case law is, through its interpretations, giving true meaning to the provision which is somewhat unspecific, all in the interest of efficiency of the procedure.**

**If any irremediable procedural obstacles exist, holding a hearing would have no purpose, but would instead cause unnecessary procedural delay and increase overall costs in a situation where a plaintiff is in a hopeless position, given that there are no actions it could take to impact on the conditions resulting in rejection of its claim.**

## PRINCIPLE OF EFFICIENCY OR PRINCIPLE OF ARGUMENTATION?

The latest amendments of the Law of Civil Procedure entered into force on 31 May, 2014. New efforts and the legislator's intent to make the civil procedure more cost-effective and more efficient can be seen from the initial provisions.

On the other hand, the legislator remains traditionally true to the principle of argumentation, introducing a new mechanism with the aim of providing plaintiffs with an additional opportunity to state their views before a decision is reached to reject the claim. The attention paid by the legislator to the principle of procedural efficiency is clearly not to the detriment of other principles making the essence of a civil procedure process.

The symbiosis of the mentioned principles is reflected in the court being legally obliged to first, before examining the claim itself, examine whether conditions for conducting litigation have been met, set out in Article 294 of the Law of Civil Procedure. If it finds that any of the conditions have not been met, the court is obliged to reject the claim. However, paragraph 2 of the same Article specifies that before rendering a decision to reject the claim, the court is obliged to hold a hearing, at which the plaintiff will be able to state their view on the circumstances resulting in the claim rejection. Circumstances resulting in the claim rejection fall into two groups: remediable and irreparable procedural obstacles.

Remediable procedural obstacles (e.g. the fact that a claim is unintelligible or incomplete) are by nature such that they can be corrected by the plaintiff by amending or supplementing the claim, while irreparable procedural obstacles (the claim was not filed on time, a procedure is already pending relating to the same claim, a final decision has already been reached on the claim, the plaintiff has no legal interest to file the claim) are such that they cannot be rectified by any action of the plaintiff.

It must be noted that in prescribing Article 294 of the Law of Civil Procedure, the legislator left it somewhat unspecific, given that the cited provision states that before rendering a decision to reject the claim, the court is obliged to hold a hearing at which the plaintiff will be able to state their view, without specifying whether the obstacle in question is remediable or irreparable. However, interpretation of the difference, which the legislator omitted to specifically regulate in the said provision, has been correctly established in a notable court case.

Namely, in the Decision of the Commercial Court of Appeals No. Pž 7711/2015 dated 17 December 2015 the court expressed the view that if there are any irreparable procedural obstacles, the court is not obliged to enable the plaintiff to state their view on rejection of the claim, since by no action of the plaintiff, and particularly not by stating their view, can the deficiencies in the lawsuit relating to subject-matter of the dispute be rectified.

Therefore, the court is not always obliged in the event of existence of procedural obstacles referred to in Article 294 of the Law of Civil Procedure to previously hold a hearing at which the plaintiff will be able to state their view on rejection of the claim.

It can be concluded that case law is, through its interpretations, giving true meaning to the provision which is somewhat unspecific, all in the interest of efficiency of the procedure. If any irreparable procedural obstacles exist, holding a hearing would have no purpose, but would instead cause unnecessary procedural delay and increase overall costs in a situation where a plaintiff is in a hopeless position, given that there are no actions it could take to impact on the conditions resulting in rejection of its claim.

On the other hand, if the procedural obstacles are remediable (for instance if the claim is unintelligible), holding a hearing would be useful both to the plaintiff and to the court, since the plaintiff would be able, instead of filing a new (intelligible) claim and paying again court fees, to address deficiencies of its claim, whereby the procedure would be continued.

Based on the above, we can conclude that case law in the matter at hand, which has indeed enabled the symbiosis of the two most important principles, finds its justification in achieving the ideal balance between the principle of efficiency and the argumentation principle of civil procedure. Although at first glance it seems to contradict the principle of argumentation, by differentiating between remediable and irreparable procedural obstacles the court is in fact striking a balance with the argumentation principle. It gives priority to the principle of efficiency by defining irreparable procedural obstacles on one hand, while, on the other hand, it also gives priority to the argumentation principle by defining removable procedural obstacles.

JPM Janković Popović Mitić  
Đorđe Novčić, Partner  
Milica Žarkić, Associate  
Katarina Živković, Associate



**JPM JANKOVIĆ POPOVIĆ MITIĆ**

NBGP Apartments, 6 Vladimira Popovića street  
11070 Belgrade

Tel: +381 11 207-6850, Fax: +381 11 207-6899

E-mail: [office@jpm.rs](mailto:office@jpm.rs), Online: [www.jpm.rs](http://www.jpm.rs)

**JPM**

JANKOVIĆ POPOVIĆ MITIĆ