

NOTE

on main novelties of the latest amendments to the Civil Procedure Code

(13 November 2017)

The Law No. 38 / 2017 on some addenda and amendments to the Law no. 8116, dated 29/03/1996, "Civil Procedure Code of the Republic of Albania", was approved by the plenary session of the Assembly on 30 March 2017 and entered into force on 5 November 2017. Following are selections of those articles that bring some of the most important novelties to the Civil Procedure Code.

✓ **Penalty for abuse of rights in the proceeding**

- In Albania the intentional procrastination of proceedings is a huge problem and it affects the efficiency of the judiciary. **Art. 34** is a good tool to increase efficiency. According the new amendments, the abusive lawsuits are punishable as well as the fraudulent concealment of facts and important circumstances related to the case. Such misbehaviour is punished with ALL 50 000 to 100 000.
- Another remedy against abuse is established by **Art. 76** regarding the request for the dismissal of a judge. In case the request of the party is declared inadmissible, the decision shall not only contain the relevant court costs but also a fine up to ALL 50 000 for natural persons and up to ALL 100 000 for legal persons, charged on the party which has abusively lodged the complaint. Such fine is unusual in other European states, but the members of the Working Group dealing with the amendment of the Civil Procedure Code emphasized the necessity because such misbehavior is customary.
 - **Art. 107**, it is about the case where the litigant or their representative has caused - without reasonable cause - delays in the adjudication of the case, the court may impose an additional court fee *ex officio*.
 - **Art. 165** – increased fine from 50 000 to 100 000 ALL for witnesses and experts that without a reasonable cause fail to appear in court
 - **Art. 166** - increased fine from 50 000 to 100 000 ALL for witnesses and experts that without reasonable cause opposes to testify.
 - **Art. 167** - increased fine from 50 000 to 100 000 ALL for the third party that without a cause does not present the requested evidence before the court.

- **Art. 168** - increased fine from 50 000 to 100 000 ALL for contempt to court orders. Prosecutors and advocates are exempt, but in case of contempt the court has the obligation to notify the bodies responsible for their discipline.”

- **Increased professionalism of legal arguments**

- **Art. 96/a** – “1. Representation of parties before the High Court shall be only through an advocate.”

- ***Lis Pendens* rule for proceedings in Albanian jurisdiction**

- **Art. 38**
- The provision as amended, is in accordance with the Article 33 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Therefore, the application of this provision will be in line with EU standards and the decisions of the Court of Justice of the European Union.¹

- ✓ **Connection between disputes**

- **Art. 57**
- Article 57 together with Article 58 try to solve the problem that in the first instance lawyers lodge four or more claims with the same demand and gives them the possibility to choose the judge.

- ✓ **Procedural changes for shortening court proceedings**

- **Art. 57-** Merging of lawsuits
- **Art. 158-** Statement of Defence
- **Art. 186** - Evidence during preparatory stage (*as a rule, no new evidence later*)

- ✓ **Simplified Procedures & Small amount claims**

- Increased to 50 million ALL, the threshold for first instance proceedings to be adjudicated by a judicial panel composed of 3 judges (usually only 1 judge) (see Art. 35 letter a).
- Small amount claims – Art. 162/a; Art. 236/a; Art. 285/a; Art. 310 para 2, point 4.

¹ *Gubisch Maschinenfabrik KG v Palumbo*, C-144/86 (1987) ECR 4861, para.17 & 11.

✓ **Chapter X “Judgement on requests for ascertaining violations of reasonable time, expedition of proceedings and compensation for damage”**

- **Articles 399/1-399/12**

- Chapter X was added by the Law 38/2017, article 83. This chapter fully meets the European Standards. It gives hope that the greatest number of cases delayed will be settled upon request of one of the parties addressed to the superordinate court. The well execution of provisions of this chapter, will help to avoid further convictions of the Republic of Albania by the European Court of Human Rights.

✓ **Notification**

➤ **Authorizing a third party to receive notifications in the party's behalf**

- **Art. 133** – “1. Anyone can appoint an authorized person to receive notifications. The appointment act shall be filed with the court.”

➤ **Use of electronic contact details**

- **Art. 154** – “2. In addition to these requests, the plaintiff shall clearly declare and/or attach in the initial lawsuit: a) His or his representative's electronic contact details, if any, where the court may use to notify him”.

✓ **More focused appeals**

- **Art. 465**
- Court of Appeal may review new facts and evidence, if (Art. 465 paragraph 5)

✓ **High Court as jurisprudence setter**

- **Art. 472** - Reasons for recourse

✓ **Alternative dispute resolution**

- **Art. 25**- Conciliation and mediation
- **Art. 158/ç**
- **Art. 297**
- **Art. 298 paragraph 5**