

## Legal

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## Legal News May 2017

### I. **Amendments to the Civil Procedure Code**

The Albanian parliament approved, on 30.03.2017, the law no. 38/2017 "On some additions and amendments to law no. 8116 dated 29.03.1996 "The civil procedure code of the Republic of Albania"" as amended" (the "Amending Law").

The Amending Law introduces many novelties/amendments related to procedures in front of courts of all levels.

In particular, we would emphasize the following:

- The Amending Law expressly provides an obligation for the judge to inform and guide the parties regarding the possibility of solving their disputes by means of the mediation procedures, in any phase of the trial.
- The Amending Law provides a more detailed regulation regarding the abuse of rights of the parties during judicial proceedings. The previous provision sanctioned only the abuse of the right to file a lawsuit, while the new provision extends the sanctioning to objections, claims, repeated demands made in bad faith, intentional delay of the proceedings; or whenever it is ascertained that the parties or their representatives have hidden or twisted important facts and circumstances relevant to the case.

- The Amending Law provisions limit the possibility of the parties to request the reinstatement in the procedural deadlines, only in the events resulting from force majeure.
- The Amending Law introduces a new procedural step, which is the declaration of defense. The declaration of defense is the response to the lawsuit filed by the plaintiff. After verifying the validity of the lawsuit, the judge requests from the respondent to file the declaration of defense not less than thirty days from the notification of the lawsuit. The content of the declaration of defense reflects the standpoint of the respondent, including evidences, witnesses, experts, facts and counterclaims of the respondent. This declaration is then notified to the plaintiff, who can file new evidences other than those included in the lawsuit, in response to the new claims of the respondent.
- The novelties of the Amending Law also include amendments of the deadline for filing a counter-lawsuit, which, according to the new provisions, will be before the issuance of the order to schedule the judicial hearing (being, thus, opposed to the completion of the judicial investigation provided by the previous provisions).
- Another novelty, introduced by the Amending Law, is the concept of low value lawsuits, which are defined as lawsuits with a value up to ALL 150.000 (one hundred and fifty thousand) resulting from contractual agreements. These lawsuits shall be examined by the court through shortened trial procedures. The review of the case in court takes place in writing or through videoconference, but the court can schedule a judicial hearing when it finds it necessary.
- The Amending Law provides that, after the order of the judge for determination the judicial hearing, no new evidences may be filed, unless the interested party proves that it was unable to present such evidences earlier, or the party proves that it could not become aware of the new facts/evidences, or there is a

public interest for accepting new evidences.

- With regards to the fines applicable to the parties, the new provisions increase the relevant amount establishing a range from between ALL 50.000 (fifty thousand) and ALL 100.000 (one hundred thousand). This amendment will affect the following:
  - (i) Absence in the hearing, without a reasonable cause;
  - (ii) The objection to testify;
  - (iii) Failure to present before the court the relevant documents or objects involving third parties;
  - (iv) Disobedience to the order of the judge.



- The Amending Law provides that if the plaintiff does not appear in the preparatory hearing or the judicial hearing, without a reasonable cause, the court may rule for the termination of the trial, if the respondent has not submitted the declaration of defense. If the respondent has submitted the declaration of defense, the latter might request a trial in absence of the plaintiff.
- An important novelty introduced by the Amending Law is Chapter X, entitled "*The ruling on the claims for determining the violation of the reasonable time, the speeding up of the procedures and the compensation for the damages*". In accordance to the art. 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the provisions

of this chapter define the reasonable length of the court examination. The reasonable time for the completion of the phases of investigation, examination or execution of a final and binding decision, are the following:

- (i) For the administrative trial near the court of first instance and the court of appeal, the completion of the examination should take place within 1 (one) year following its commencement in each level;
- (ii) within 2 (two) years, for the civil examination in front of the court of first instance; within 2 (two) years, for the civil examination in front of the court of appeal; within 2 (two) years, for the civil examination in front of the supreme court;
- (iii) For the procedure of enforcing a civil or administrative decision, the term shall be 1 (one) year starting from the day of the initiation of the execution procedures.

- The examination of claims related to the violation of reasonable time and speeding of procedures shall be examined within 3 (three) months after the filing of the request.
- With regards to the examination of cases in front of the court of appeal, the new law institutes more comprehensive articles stating the terms and procedures for the review of the case in the court of appeal. As such, depending on the lawsuit, the parties may submit a written request to the reporting judge asking to speed up the review of the case for particularly serious and motivated reasons.
- In relation to the evidences examined in front of the court of appeal, the new provision limits the reviewing of new evidences or new facts to the following events:
  - (i) The interested party proves that, without its fault, during the review of the case before the court of first instance, it was not

able to present these new facts and/or evidences;

- (ii) The interested party had requested before the court of first instance to present these new facts and/or evidences, which are important for the case, but the court of first instance has decided, in violation of the provisions of the law, not to accept them;



- (iii) The interested party proves that it was not aware of these facts and/or evidences during the examination in the court of first instance.

- The Amending Law also provides the grounds of a recourse as follows:
  - (i) Wrong application of the material or procedural law, which is of fundamental importance in relation to the judicial practice;
  - (ii) If the appealed decision is different from the judicial practice of the Supreme Court;
  - (iii) There are serious violations of the procedural provisions, which have as consequence the invalidity of the decision or the examination procedure.
- The recourse against the decisions of the court of appeal for lawsuits with a maximum value of ALL 150.000 (a hundred and fifty thousand) is not permitted.

- With regard to the decisions of the Supreme Court, the Amending Law amends this provision, by reducing the possible outcomes to the following:
  - (i) Confirmation of the previous decision;
  - (ii) Revocation of the decision of the court of appeal and confirmation of the decision of the court of first instance;
  - (iii) Revocation of the decision of the court of appeal and ordering the retrial of the case by another panel of judges in the court of appeal;
  - (iv) Revocation of the decision and dismissal of the case.
  
- As regards the reexamination of a final and binding decision, the Amending Law removes the term limiting the filing of a lawsuit up to a year from the day the cause for re-examination has occurred. This request should be filed within 30 days from the day the interested party becomes aware about the cause for re-examination.
  
- The Amending Law shall enter into force 6 (six) months after its publication with the Official Gazette (i.e. publication date 05.05.2017, [Official Gazette no. 98](#)). The civil cases, which are already under examination on the day of entry into force of the Amending Law, near the first instance court, the Court of Appeal or the Supreme Court, will continue to be judged according to the provisions of law in force at the time of the filing of the lawsuit.

Civil cases, which go under examination near the Court of Appeal or the Supreme Court, upon the entry into force of the Amending Law, will be judged according to the legal provisions in force on the day of the filing of the relevant appeal or recourse.

Civil cases, for which has been decided the retrial of the case, upon the entry into force of the Amending Law, will be judged according to the provisions of this law.

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