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CIVIL CODE
AND
CIVIL PROCEDURE CODE
OF THE REPUBLIC OF ALBANIA

Co-funded by the European Union
EUIVJUSTICE
Implemented by:
ITALIAN AGENCY FOR DEVELOPMENT COOPERATION
CSM Consiglio Superiore della Magistratura
In partnership with:
EXPERTISE FRANCE GROUPE AFD
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Civil Code
and
Civil Procedure Code
of the Republic of Albania

March – May 2025

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Disclaimer:

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CIVIL CODE
OF
THE REPUBLIC OF ALBANIA

March 2025

LAW
no. 7850, dated 29.7.1994

ON THE CIVIL CODE OF THE REPUBLIC OF ALBANIA*

Pursuant to Article 16 of Law no. 7491, dated 29.4.1991 "On the fundamental constitutional provisions", on the proposal of the Council of Ministers,

THE PEOPLES ASSEMBLY
OF THE REPUBLIC OF ALBANIA

DECIDED:

PART I
GENERAL PART

TITLE I
SUBJECTS OF CIVIL LAW

CHAPTER I
NATURAL PERSONS

* Amended by Law no. 8536, dated 18.10.1999, published on the Official Journal no. 29, dated 21.11.1999.
Amended by Law no. 8781, dated 03.05.2001, published on the Official Journal no. 24, dated 20.05.2001.
Amended by Law no. 17/2012, dated 16.02.2012, published on the Official Journal no. 18, dated 14.03.2012.
Amended by Law no. 121/2013, dated 18.04.2013, published on the Official Journal no. 67, dated 03.05.2013.
Amended by Law no. 113/2016, dated 03.11.2016, published on the Official Journal no. 219, dated 15.11.2016.
Article 377 of the Civil Code was declared incompatible with the Constitution by the decision no. 69, dated 27.12.2023 of the Constitutional Court, published on the Official Journal no. 23, dated 07.02.2024.

A. LEGAL CAPACITY

Article 1

All natural persons are entitled to full and equal capacity to enjoy civil rights and obligations within the limits defined by law.

Article 2

The legal capacity begins with the birth of the person alive and ends with his death. The child when born alive shall enjoy legal capacity from the time of conception.

Article 3

Foreigners are entitled to the same rights and obligations as those recognised to Albanian citizens, with the exceptions provided for by law.

Article 4

The natural person shall not be limited of legal rights, except those provided for by law. The legal action limiting the legal capacity of a natural person is invalid.

B. RIGHT TO A NAME

Article 5

Any natural person has the right and obligation to have his forename and surname given to him in accordance with the law. The person, who is deprived of the right to use them, or is infringed by the unjust use that the others make to them, may request in the court the use of his forename or surname, the cessation of the infringement as well as the compensation of the relevant damage.

This request can be submitted even by persons, who although do not bear the infringed, or unjustly used forename or surname, have family interests worthy to be protected.

When the court accepts the lawsuit, it orders the publication of the decision in the Official Journal. At the request of the plaintiff, the court may order the publication of its decision in other newspapers, as well.

The nickname used by the natural person enjoys the same protection.

C. CAPACITY TO ACT

Article 6

At the age of eighteen, a person acquires full capacity to assume rights and bear civil liability through his own actions.

A woman, who has not reached the age of eighteen, acquires full capacity to act through marriage. She does not lose this capacity even when the marriage is declared void or it is dissolved before she reaches the age of eighteen.

Article 7

A minor child, who has reached the age of fourteen, can perform juridical acts only with prior consent of his legal representative. However, he can take part in social organisations, own what he earns with his work, deposit his savings and be in possession of these savings himself.

Article 8

A minor child, who has not reached the age of fourteen, is incapable to act. He can perform juridical acts that fit his age, acts that are accomplished on the spot and acts of benefit to him without any compensation in return. Other juridical acts on his behalf are carried out by his legal representative.

Article 9

By court order, a minor of the age of fourteen to the age of eighteen, who is unable to take care of his work due to mental illnesses or mental deficiency, may be deprived of the capacity to perform juridical acts. These acts can be carried out only through his legal representative.

Article 10

By court order, an adult who due to mental illness or mental deficiency is wholly or partially unable to take care of his work, may be deprived of or limited to his capacity to perform juridical acts.

Article 11

The juridical act that limits the capacity to act is void.

Ç. DOMICILE AND RESIDENCE

Article 12

Domicile is the country where the person due to work or permanent service, location of assets or realization of his own interests, normally or most of the time stays.

Every adult person has the right to freely determine his domicile.

A person may not have more than one domicile at the same time.

This provision shall not apply to the domicile of the trader's activity.

Article 13

The minor child who has not reached the age of fourteen has the same domicile as that of his parents. When the parents have different domiciles, their child under fourteen years of age has the domicile of the parent he lives with.

The person who is deprived of the capacity to act and the children placed under guardianship have as domicile that of their legal representative.

Article 14

The domicile of a person is the place where he is located to perform certain jobs or duties, to attend a certain school or course, to obtain medical care, to serve a criminal sentence, and for other cases of this nature.

D. DECLARATION OF DISAPPEARANCE AND DEATH OF A PERSON

Article 15

A person who is absent from his domicile and his last place of residence and for whom there is no news for more than two years, at the request of any interested person, he can be declared missing by court order.

When the day of the last news cannot be determined, the above-mentioned period begins from the first day of the following month on which the last news have been taken. When the month cannot be determined, the period begins from 1 January of the following year.

Article 16

With the announcement of the disappearance of a person, a trustee is appointed for the administration of his assets.

The court decision, by which a person is declared missing, is published in the Official Journal and it is submitted for registration to the relevant civil registry office.

Article 17

A person who is declared missing, at the request of any interested person, can be declared dead by a court order, when four years have passed without any notice from the day he has been declared missing.

Article 18

A person, missing during military actions and this loss is verified by the competent military authorities, when two years have passed without any news from the date the peace agreement has entered into force or three years from the end of military actions, may be declared dead by a court order, with no need to have been previously declared missing.

Article 19

A person, missing during a natural disaster or in circumstances that led to believe that he is dead, can be declared as such by a court order, when two years have passed without any news from the day the disaster has occurred, with no need to have been previously declared missing.

When the date on which the disaster has occurred is not determined, the period of two years starts from the first day of the month following that in which the disaster has occurred and, when the month cannot be determined, the period begins from the first day of January of the following year.

Article 20

When two or more persons have died and it cannot be proved who of them died first, for legal purposes, it is considered that they have died at the same time.

Article 21

When announcing the death of a missing person, the day when it has occurred is determined. When this day is not possible to be correctly verified, the court determines it according to the rules provided for in the articles of this Code.

At the request of any interested person, the court that issued the decision may change the date of death, when it is proved that the person has died in another day.

Article 22

Death announced by court decision is equal in all legal consequences to the true death.

The decision of the court by which a person is declared dead, is published in the Official Journal and it is submitted for registration to the relevant civil registry office.

Article 23

When the person declared dead appears to be alive, at his request or at the request of any interested person, the decision is revoked by the court that has issued it.

The person who appears to be alive has the right to seek his property and the assets acquired through it, even from third persons who have acquired it from those, whom the assets have passed to because of the declaration of his death, in the limits and conditions provided for by this Code and the Family Code.

CHAPTER II
LEGAL PERSONS

A. GENERAL PROVISIONS

Substance of legal person

Article 24

Legal persons are public legal persons and private legal persons.

Article 25

Public legal persons are state institutions and enterprises, which are self-financing or financed by the state budget, as well as other public entities recognized by law as a legal person.

State institutions and entities that do not follow economic purposes, do not register.

Article 26

Private legal persons are companies, associations, foundations and other entities of private character, which acquire legal personality in the manner prescribed by law.

The name of a legal person

Article 27

A legal person has its full name and its abbreviated name. The name of any other company or organization that conducts economic activities is the firm, which shall express the particular purpose of this activity.

The seat of a legal person

Article 28

The seat of a legal person is where its governing body is, unless it is provided otherwise in the statute or in the founding act.

The capacity of a legal person

Article 29

The legal person has the capacity to acquire rights and assume civil obligations from the moment it is founded and, when the law requires it to be registered, from the moment it is registered.

Article 30

A legal person may conduct any legal activity permitted by law, in its founding act or statute.

Article 31

A legal person acts through its bodies provided for by law, in its founding act or statute which express its will.

Legal actions performed by the legal persons' bodies within their competences are considered as legal actions performed by the legal person.

Liability of a legal person

Article 32

A legal person is liable for damages caused by its bodies in the performance of their duties.

The legal person is liable for its obligations within the limits of its property. Persons who have acted with the quality of the body of a legal person, are personally liable to compensate the damages caused by their fault.

Article 33

State and the state legal persons are not liable for each other's obligations, unless it is accepted by them or it is expressly provided for by law.

Termination of a legal person

Article 34

A legal person shall terminate in the manner specified in the establishment act, in the statute or by law.

Article 35

Upon termination, the legal person ceases its operations and is put into liquidation.

Article 36

Transfer of rights and obligations in the event of termination of a legal person, for which registration is required, shall take effect from the time of registration.

When registration is not required, the transfer of rights and obligations in cases envisaged by the above-mentioned paragraph, shall take effect from the time of approval of the relevant balance sheet, in the manner provided for by law, by the appropriate body that has created it or by the statute.

Liquidation of a legal person

Article 37

Liquidation of a legal person that has terminated is done with the realization of rights and payment of obligations by the liquidators appointed by the body that has determined its termination.

The Commission makes liquidation under the relevant legal provisions, the statute or the founding act.

Article 38

When a legal person terminates because of conducting illegal activity, assets remaining after liquidation pass to the state.

The liquidation of the bankrupt legal person is governed by law.

B. ASSOCIATIONS

Establishment of associations

Article 39
(Amended by Law no. 8781, dated 03.05.2001, Article 1)

The association is a legal person established by the free will of five or more natural persons or not less than two legal persons that follow a particular, lawful, purpose for the good and in the interest of the public or its members.

Article 39/1
(Added by Law no. 8781, dated 03.05.2001, Article 2)

An association has the right to ownership of movable and immovable property, to generate income through the management of these assets and to exercise other activities in accordance with the law and with the purpose and scope of activity of the association provided for in its statute.

Income generated from an association shall be used only for the activities provided in the purpose and scope of the activity provided for in its statute.

It is not allowed for an association to carry out any profit activity.

Article 40

(Amended by Law no. 8781, dated 03.05.2001, Article 3)

The founding act of an association is registered in the court at the request of its founders.

Rules for the organization and functioning of an association are defined in its statute, which must be in writing and contain especially:

a) Name and purpose of the association, its seat and the territory in which it will develop its activity;

b) Conditions of admission and dismissal of its members as well as their rights and duties;

c) Governing bodies of the association, the manner of establishment and their powers;

ç) Terms, manner of calling and powers of general meetings and delegates;

d) The sources of its material assets as well as contributions and dues that every member should give;

dh) The manner of changing the statute and termination of association.

Article 41

(First paragraph amended by Law no. 8781, dated 03.05.2001, Article 4)

The association is founded by a meeting its founders in which the statute is approved and its governing bodies are elected. An association, at its request, is registered in the court in the manner prescribed by law.

The court controls the conformity of the statute with the law.

Article 42

(Amended by Law no. 8781, dated 03.05.2001, Article 5)

The association acquires the quality of a legal person from the date of its registration in the court. Until the day of registration, the founders of the association can perform actions that are necessary for establishing and meeting the conditions for its registration.

Article 43

(Amended by Law no. 8781, dated 03.05.2001, Article 6)

An association has the right to establish its branches wherever it deems it

reasonable to achieve the purpose and scope of activity of the association.

Article 43/1

(Added by Law no. 8781, dated 03.05.2001, Article 7)

Cases and ways of monitoring the activity of associations by competent state authorities are expressly provided for by law.

Organization of an association

Article 44

The general meeting of members or their representatives, is the highest body of the association. It is called by the governing body under the relevant provisions of the statute and when one fifth of the members require it.

Article 45

The general meeting decides on the admission or dismissal of the members and for any other matter that is not within the competence of another body of the association.

It supervises specifically the income and actions of the association as well as its property facilities.

Article 46

(Paragraph II is changed and paragraph III is added by Law no. 8781, dated 03.05.2001, Article 8)

All members of an association have equal voting rights at the general meeting.

A member of the association does not participate in discussions and voting where he himself or his spouse, children, relatives or in-laws are in conflict of interest with the association regarding an issue on the agenda.

Decisions on amending the statute and dissolving the association are approved by a majority of all the members of the association, unless the statute provides for a higher voting majority.

Article 47

The governing body has the right and duty to take care of the interests of the association, to protect them and to represent the association under powers conferred by statute.

Membership in an association

Article 48

Admission of new members, who fulfil the necessary conditions may be allowed at any time. The right to resign is guaranteed, but on condition that it be submitted at least six months before the end of the calendar year or within the period provided for in the statute.

Article 49

The right of membership in an association cannot be transferred or assigned by inheritance.

Article 50

(First paragraph is changed by Law no. 8781, dated 03.05.2001, Article 9)

A member who leaves or is expelled from the association is responsible for its obligations to third parties until the time of his leaving and has no rights over its movable and immovable property.

They have the duty to pay dues for the time they have been part of the association.

Article 51

Each member has the right to challenge in the competent court decisions of the association that come into conflict with the law or statute.

This objection can be made within one month from the day the member has received notification of the decision.

Dissolution

Article 52

(Reformulated by Law no. 8781, dated 03.05.2001, Article 10)

An association is dissolved:

a) By decision of the general meeting of its members;

b) When the number of its members is below the minimum required by this Code or the statute;

c) When the purpose of the association is fulfilled or cannot be fulfilled;

ç) When it is proved that the association has conducted illegal activities;

d) In other cases provided for by law.

The court, in cases provided for by law, may decide on dissolving an association, at the request of any member of the association, its decision-making bodies and relevant state bodies.

Article 53

(Amended by Law no. 8781, dated 03.05.2001, Article 11)

When the dissolution of an association is decided, it is put in liquidation and is deregistered under the rules provided for in the law.

Article 53/1

(Added by Law no. 8781, dated 03.05.2001, Article 12)

The court, after taking the opinion of the entity that has sought dissolution of the association, decides on the destination of the assets that remain after its dissolution in accordance with the rules provided for in the statute, and considering their destination and the fundamental purpose for which the association was established.

C. FOUNDATIONS

Method of creation

Article 54

(Amended by Law no. 8781, dated 03.05.2001, Article 13)

The Foundation is a legal person without membership, whose object is to achieve a legitimate aim by allocating assets to the benefit and interest of the public.

Article 55

(First paragraph amended by Law no. 8781, dated 03.05.2001, Article 14)

Foundations are created by natural or legal persons with a notarial act or by testament.

The act for the creation of the foundation, at the request of the founders, is registered in the court. Names of the founders, purpose of the foundation,

the assets (cash, securities, movable and immovable property), resources and financing, governing bodies, their powers and names of members of the administration are specifically determined in the act of creation.

Article 56

(Amended by Law no. 8781, dated 03.05.2001, Article 15)

A foundation acquires the quality of a legal person from the date of registration in the court. Until the day of registration, the founders of the foundation or executor of the testament can perform actions that are necessary for the establishment and fulfilment of conditions for its registration.

Article 56/1

(Added by Law no. 8781, dated 03.05.2001, Article 16)

A Foundation has the right to ownership of movable and immovable property, to generate income through the management of these assets, and to exercise other activities, in accordance with the law and the purpose and object of the activities provided for in the statute of the foundation.

The income generated by the foundation shall be used only for realisation of the activities prescribed in the purpose and object of the activity provided for in its statute.

A foundation is not permitted to perform profit activity.

Article 57

The act of creation of the foundation may be invalidated by the founders prior to the registration or when the relevant activity has not started.

The act of creation of the foundation may be challenged by the heirs or creditors of the founder.

Activity of a foundation

Article 58

Bodies of a foundation, methods of creation and competencies are determined by the act of creation. Each foundation conducts its activities under the provisions of the legislation in force and its act of creation.

Article 59

(Amended by Law no. 8781, dated 03.05.2001, Article 17)

Cases and ways of monitoring the activity of foundations by the competent state authorities is expressly provided for by law.

Article 60

(Repealed by Law no. 8781, dated 03.05.2001, Article 18)

Article 61

Property disputes, in which the foundation is a party are resolved by a competent court.

Article 62

(Amended by Law no. 8781, dated 03.05.2001, Article 19)

A foundation is dissolved:

a) By decision of its highest decision-making body;

b) When the purpose for which it was created is fulfilled or when its purpose cannot be fulfilled;

c) When it is proved that the foundation has begun to conduct illegal activities;

ç) In other cases provided for by law.

The court, in cases provided for by law, may decide on dissolving the foundation at the request of its founder, the foundation's decision-making bodies and competent state bodies.

Article 63

(Amended by Law no. 8781, dated 03.05.2001, Article 20)

The court, after taking the opinion of the entity that has sought dissolution of the foundation decides on the destination of the assets that remain after its dissolution in accordance with the rules provided for in the statute, and considering their destination and the fundamental purpose for which the foundation was established.

TITLE II
REPRESENTATION

CHAPTER I
MEANING AND TYPES OF REPRESENTATION

Meaning of representation

Article 64

By way of representation, a person (representative) conducts legal actions within the titles conferred by law, by Power of Attorney or by the court, in the name of and on behalf of any other natural or legal person (the represented person).

Representation is not allowed when the legal transaction must, by law, be carried out by that person. The person who has no full capacity to act cannot act as representative.

Limits and consequences of representation

Article 65

The powers of legal representation are determined by the provisions of the law that confer this quality, while the powers of the representative appointed by the represented person are determined by Power of Attorney.

The powers of representation may be determined by the circumstances in which concerned legal operations are performed.

Article 66

Legal transactions carried out by a representative within the powers given to him, create direct consequences for the represented person.

Article 67

The representative cannot perform legal transactions on behalf of the represented person neither by himself nor with other persons represented by him, unless the represented person has allowed this explicitly, or when the content of the legal transaction does not affect his interests.

Article 68

When two or more representatives are assigned to conduct a legal transaction, each of them could conduct it without the participation of the other representatives, unless it is otherwise provided in the Power of Attorney.

Article 69

The representative must act personally and may not appoint a substitute representative, unless it is permitted by the represented person, when the property referred to in the Power of Attorney is located outside the territory of the district where the representative lives, and when the appointment of the substitute representative is deemed necessary for protection of interests of the represented person.

The representative shall immediately notify the represented person for the substitute representative he has appointed, otherwise he is responsible for the actions of the substitute representative. The substitute representative may be revoked at any time by the represented person or by the representative who has appointed him.

Representation by Power of Attorney

Article 70

Power of Attorney is a document in which the principal (grantor), with his free will determines the character and scope of the titles he has given over to the attorney-in-fact.

Article 71

The Power of Attorney is general when the principal has given over to the attorney-in-fact powers to carry out varied legal transactions, which have to do with a set of rights of the principal, except those expressly excluded by him.

The Power of Attorney is special when the principal has given over to the attorney-in-fact the power to conduct one or more certain legal transactions, which are characterized by a common goal.

Article 72

The Power of Attorney is always done in writing.

Any Power of Attorney made for concluding a contract, which by law

can only be made by a notarial act, shall be made in this form, otherwise it is invalid. Also the Power of Attorney made for performing actions before the courts and other state institutions must be made by a notarial act, unless by legal provisions it is allowed that it be made by a simple document.

The Power of Attorney on behalf of public and private legal persons may be made by just the signing of its executives and its relevant stamp, unless the law requires that the legal act be performed by a notarial act.

Article 73

The Power of Attorney made for collecting postal delivery or money from post offices or banks up to a certain amount of them, the Power of Attorney made for collecting salaries and other remuneration derived from labour relations, as well as the Power of Attorney made for collecting pensions, assistance and scholarships can be attested by:

a) Administrator of the city quarter or the village elder;

b) The head of the legal entity or of its branch, where the principal is in employment relations or attending school;

c) Director of the health institution where the principal is being treated;

ç) Command of the military unit where the principal is serving;

d) Director of the institution where the principal is detained or serving an imprisonment sentence.

Article 74

Changes to the Power of Attorney must be made known to third parties by appropriate means. In the absence of such notices, these changes cannot be directed against third parties, unless it is proved that they were aware of those changes in the Power of Attorney at the time of the legal transaction.

Article 75

The principal may revoke the Power of Attorney and the attorney-in-fact may resign at any time. Any agreement to the contrary is void.

Termination of Power of Attorney

Article 76

Power of Attorney terminates when:

a) The attorney-in-fact has accomplished the legal acts for which it was granted;

b) The period of time for which it was granted expires;

c) The principal or the attorney-in-fact die, or when one of them has lost the capacity to act;

ç) The representative legal person or the represented legal person terminate;

d) The principal revokes the Power of Attorney or the attorney-in-fact resigns.

Upon the termination of the Power of Attorney, the attorney-in-fact, at the request of the principal, shall turn back the Power of Attorney to the principal.

Representation after changes or termination of Power of Attorney

Article 77

Legal acts carried out by the attorney-in-fact, after changes made to the Power of Attorney or after its termination, are compulsory for the principal or his heirs, if the third parties with whom those legal transactions have been carried out have not been aware of the changes or the termination of the Power of Attorney.

Representation without rights

Article 78

When a natural or legal person acts as a representative without having this quality, as well as when the representative exceeds the rights conferred to him, the legal acts carried out in these conditions are not compulsory for the person on whose behalf they have been conducted, unless he has approved them later.

When approval is not given, the third party acting in good faith, has the right to request compensation of the damage from the representative.

TITLE III
LEGAL TRANSACTION

CHAPTER I
GENERAL PROVISIONS

Definition of legal transaction

Article 79

A legal transaction is the legal expression of the will of a natural or legal person, which aims to create, modify or extinguish rights or civil liability.

A legal transaction may be unilateral or bilateral.

Forms of legal transactions

Article 80

A legal transaction can be done in writing, orally and in any other undoubtable expression of the will. The document can be simple or a notarial act.

Article 81

A written legal transaction must be signed by the person who conducts it.

Article 82

The person who does not know to, or because of illness or physical handicap cannot sign, appoints another person for this purpose.

The signature of this person must be certified by a notary, explaining the reason for which the person who has conducted the legal transaction has not been able to sign it himself.

For transactions performed in banks and other credit institutions, in post offices or customs offices, the signature of this person is certified by an authorized official of these institutions.

Article 83

The legal transaction made for the transfer of ownership of immovable

assets and of the real rights over them, must be notarized and registered, otherwise it is not valid.

The legal transaction that is not made in the form expressly required by law is not valid. In other cases, the legal transaction is valid, but it cannot be proved by witnesses.

The Joint Colleges of the Supreme Court, in the unifying decision no. 1, dated 06.01.2009, have raised the following issues for unification:

1. What is the legal interpretation of Article 83 of the Civil Code, which states that "the juridical act for the transfer of ownership of immovable assets and real rights over them must be notarized act and registered, otherwise, it is not valid"?
2. Is the registration of the notarial act of sale of an immovable asset a prerequisite without which ownership of the asset cannot be acquired?
3. Can a lawsuit for real rights be filed by a person who claims to have a lawful title of ownership over immovable asset but has not registered it in the immovable property registration office?

The Joint Colleges of the Supreme Court, regarding the above-mentioned issues, have determined the following:

> […] The juridical act for the transfer of ownership of immovable assets is valid if it meets all the conditions stipulated in Articles 79, 663, and 659 of the Civil Code.
>
> […]
>
> […] Ownership of an immovable property is transferred at the moment the contract for the alienation of the asset is entered. The buyer or beneficiary of the asset becomes its lawful owner from the moment of signing the contract, acquiring all rights and obligations related to their status as the owner of the property.
>
> […]
>
> The Joint Colleges of the Supreme Court assess that:
>
> i. The registration of the juridical act (contract) in the immovable property registers is very important for third parties, as only after registration does the contract become known to them and can be contested.

ii. The failure to register the juridical (contract) for an immovable property in the immovable property registers does not affect the contract's validity, but it prevents the buyer from alienating the property to third parties and, at the same time, may pose risks and consequences for the buyer, because the seller acting in bad faith could transfer the property again. An immovable property can only be securely purchased if the property registers show a continuous series of transcriptions/registrations originating from the seller and preceding owners.

[…]

[…] The registration or transcription of a juridical act is not an element of its validity (contract). Failure to register the contract in the immovable property registers does not render the contract for the transfer of immovable property invalid, but it does prevent the buyer from transferring it to third parties. A contract that is not registered is perfected and valid and has its essential effects. Upon signing the contract for the transfer of immovable property, the beneficiary of the rights becomes the owner of the immovable property and is entitled to exercise their rights against third parties, except for the transfer of the immovable property in favor of third parties.

[…]

[…] The plaintiff is entitled to file a reivindication lawsuit if they prove that they are the owner of the immovable property through a contract, inheritance, etc.

Conditional legal transactions

Article 84

A legal transaction is conditional when the arising or termination of rights and obligations provided for in it depend on an event which is not known whether it is going to happen or not.

Article 85

The condition is suspensive when the rights and obligations arise if the event occurs.

The condition is resolutive when the rights and obligations terminate if the event occurs.

Article 86

When the verification of the condition is prevented in bad faith by the party that would benefit from the lack of verification, the condition is considered substantiated.

When the verification of the condition is caused in bad faith by the party that would benefit from its verification, the condition is considered unsubstantiated.

Article 87

When the right that depends on verification of the condition is violated or lost because of the actions of the party obliged upon condition, the later must compensate the damage caused in case the condition is substantiated.

Article 88

The consequences related to the verification of the condition begin from the moment the condition is verified, unless when by the content of the legal transaction it results that these consequences should start at an earlier time.

Legal transactions under a deadline

Article 89

The deadline of a legal transaction is the certain moment from which the legal power or some of its effects start or cease.

Article 90

The deadline is suspensive when the legal transaction provides that its consequences start from a certain moment.

The deadline is resolvable when the legal transaction provides that its consequences cease at a certain moment.

Calculation of deadlines of legal transactions

Article 91

When the deadline is defined in days, the day on which the event takes place or the time from which it should start is not calculated.

The deadline defined in weeks, months or years, ends with the passage

of that day of the last week or last month which has the same name or number with the day it started. When there is no such day in the last month, the period ends at the end of the last day of this month.

When the last day of a deadline falls on a holiday, the deadline expires on the working day following that holiday.

CHAPTER II
INVALIDITY OF LEGAL TRANSACTIONS

Invalid legal transactions

Article 92

Invalid legal transactions do not create any legal consequences. As such are those which:

a) Come in conflict with a mandatory provision of law;

b) Are performed to deceive law;

c) Are committed by minors under the age of fourteen;

ç) Are made in agreements between the parties without aiming to bring legal consequences (fictitious or simulated).

The Joint Colleges of the Supreme Court, in the unifying decision no. 932, dated 22.06.2000, addressed the following question for resolution: When can a legal act be considered simulated, and what are the essential elements that make it so? Subsequently, the Joint Colleges of the Supreme Court determined that:

> In cases of fictitiousness and simulation, the discrepancy between the will and its expression is intended by the parties to the legal transaction themselves. A juridical act is considered simulated when it is performed with the purpose of concealing another juridical act, whether valid or invalid, which the parties actually intended to carry out and which results from the counter-declaration as a secret agreement between them.

The Joint Colleges of the Supreme Court, in the unifying decision no. 13, dated 09.03.2006, addressed aspects of the absolute invalidity of juridical acts and their distinction from relatively invalid jurudical acts, determining that:

> A juridical act that is absolutely invalid does not produce the legal consequences intended by the parties; consequently, it does not have the legal power of a valid juridical act.
>
> When the court, during the examination of the case, finds that a juridical act is absolutely invalid, it does not issue a decision declaring it invalid but is limited only to confirming its invalidity. Based on this, it resolves the dispute between the parties regarding the relevant legal relationship.
>
> Absolute invalidity can be claimed by anyone with an interest. It can be invoked against the other party to the juridical act as well as to any third party. Absolute invalidity can also be considered by the court ex officio, without being requested by the interested party, or even against its will.
>
> From the entirety of the provisions regulating the institute of invalidity of juridical acts, it appears that when a juridical act is absolutely invalid, the juridical act performed between one of the parties to the invalid juridical act and another person (third party with the plaintiffs) is also invalid, meaning it has no legal power. This is explained by the fact that the party to the invalid juridical act [...] does not have the right to transfer it to the plaintiffs.
>
> [...]
>
> The Albanian Civil Code makes two classifications of invalid juridical acts. The first group includes juridical acts that are found to be invalid, and the second group includes juridical acts that are declared invalid.
>
> Juridical acts found to be invalid form the group of acts traditionally considered in Albanian legal and judicial tradition as "absolutely invalid." Meanwhile, juridical acts declared invalid belong to the group known as "relatively invalid." There are differences between absolute and relative invalidity:
>
> - Relatively invalid juridical acts can only be annulled by the court, while absolutely invalid juridical acts are such at the moment they are made, and it is not necessary for the court to annul them.

- Relatively invalid juridical acts have legal value until the moment they are declared invalid by the court, whereas absolutely invalid juridical acts have no legal value, either when they are concluded or at a later time.
- Absolutely invalid juridcal acts do not create any legal consequences, while relatively invalid juridical acts create legal consequences until they are declared invalid. Only after being declared invalid do relatively invalid juridical acts are considered as such, but the consequences of their invalidity are resolved from the moment they were concluded.
- The annulment of relatively invalid juridical acts is always conditioned on the filing of a request with the court by the interested party. This situation is not observed with absolutely invalid juridical acts, as these acts are not declared invalid but are merely recognized to be invalid.

Article 93

When a legal transaction is intended to cover another legal transaction, the latter is valid if it fulfils all the conditions necessary for its validity.

A fictitious or simulated legal transaction does not harm third parties that have acquired rights in good faith based on it.

Legal transactions declared void

Article 94

Legal transactions, which are valid until the court with the request of the interested party declares them invalid, are considered cancellable. As such are the legal transactions carried out by:

a) Minors over fourteen years of age, when the legal transaction is carried out without the consent of a parent or guardian;

b) Persons who, because of mental illness or mental deficiency have been deprived of or limited the capacity to act, when the legal transaction is performed without the consent of the guardian;

c) Persons, who at the time of performance of the legal transaction, were not aware of the importance of their transactions, although at that time they were not deprived of the capacity to act;

ç) The person who has carried out the legal transaction being defrauded, under duress, in error or because of the great need.

Cancellation of these transactions may be required even after the death of the person concerned, but only when the deprivation of its capacity to act is required before death.

Article 95

Fraud can cause that a legal transaction be declared invalid when the lie used by one party to lead another party to the error is as such that without it the party would have not carried out the legal transaction.

When fraud is committed by a third party, the defrauded party may demand the invalidation of legal transaction only when at the time of its commission the other party was aware or should have been aware of the fraud.

Article 96

Duress may cause that a legal transaction be declared invalid if it is such as to intimidate the person that he himself, his spouse, descendants or his predecessors will undergo an unjust and serious physical or material damage.

Duress can be committed by a third party that does not take part in the legal transaction.

Article 97

Error can cause the legal transaction be declared invalid only if it is related to quality of the thing, identity or qualities of the other person, or circumstances so essential that without them the party would have not carried out the legal transaction.

Article 98

An error in calculation does not lead to the declaration of the legal transaction as invalid, but only its rectification, unless the amount of error has been determining for the agreement.

Article 99

A legal transaction can be declared invalid in the event that because of the great need, the obligations assumed by one party are negligible compared to the benefits received by the other party from the legal transaction.

Article 100

A legal transaction carried out by the representative can be declared invalid at the request of the representee, when the will of the representative is flawed.

When the flaw is related to elements defined by the representee, a legal transaction can be declared invalid only if the will of the latter was flawed.

Article 101

When the definition of good faith or bad faith, of knowledge or ignorance of certain circumstances that constitute valid or invalid determining conditions of a legal transaction are important in the legal transaction, the representative as a person is taken into account, except when it comes to circumstances determined by the represented person.

The represented person who acts in bad faith cannot benefit in any case from the ignorance or good faith of the representative.

Article 102

A legal transaction carried out at the detriment of the represented person due to bad faith agreement between the representative and a third person can be declared invalid for the represented person.

Lawsuit statute of limitation

Article 103

A lawsuit seeking a legal transaction be declared invalid, lapses within five years.

Article 104

The deadline to bring a lawsuit begins:

a) For legal transactions carried out by people who have been deprived of or have had limited capacity to act, from the day they become adults or regain the capacity to act;

b) For legal transactions carried out by fraud, duress or error, from the day the fraud or error are disclosed, or duress has ceased, but in any case not more than three years from the day the legal transaction is carried out;

c) In other cases, from the day the legal transaction is carried out.

Article 105

A legal transaction that is declared invalid is considered as such from the moment it was carried out.

Consequences of invalidity of a legal transaction

Article 106

When a legal transaction is invalid for the reason that it comes into conflict with the law, or is intended to defraud the law, anything that the parties have given to each other is taken and shall be passed to the state revenue and where it is not possible to take the same thing, it is required its value.

When one of the parties has acted in good faith, the court may decide that anything that this party has given be turned back to this party and where the return of the same thing is not possible, they must pay its value to the party.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated 30.10.2012, reached the conclusion that it is necessary to unify the case law regarding absolutely invalid juridical acts, the legal remedies in cases of such invalidity, the type and nature of the lawsuit that can be filed based on Article 92 of the Civil Code, and the resolution of the consequences of invalidity. For this purpose, the Joint Colleges of the Supreme Court determined the following:

> 39.1. A juridical act that is invalid may be considered by the court ex officio, without being requested by the interested party, even against its will.
>
> To consider a juridical act absolutely invalid, it is not necessary to present a specific request, whether it be a claim or counterclaim, as this type of invalidity is recognized regardless of whether a request is presented in court.
>
> Absolute invalidity may be raised by any party to the litigation with an interest in the matter. The form of raising the issue may also be by way of rebuttal, as an absolutely invalid juridical act cannot be made valid through any previous action.
>
> 39.2. The request for the declaration of the absolute invalidity of a juridical act cannot be made as an independent request; it must always be made during the trial on the merits of the case by the court, or at least as a request accompanying the resolution of the consequences arising from its execution.

39.3. The consequences arising from the execution (performance) of an absolutely invalid juridical act are resolved only upon the request of the parties to the litigation, and when the court primarily determines the invalidity of the juridical act, it only resolves those consequences that are the subject of the claim or counterclaim, without addressing consequences for which there is no specific request from the parties. This does not prevent the same parties or third parties from seeking in a separate trial the resolution of consequences that were left unaddressed in the trial in which the juridical act was determined to be absolutely invalid.

Article 107

When a legal transaction is declared invalid because it is carried out by fraud, duress, great necessity or because there is no form required by law, each party must return to the other party anything they have taken from the other party and, where the return of the same thing is not possible, they must pay its value to the other party.

Article 108

When a legal transaction is found to be invalid for the reason that it has been carried out by a minor who has not attained the age of fourteen or it is declared invalid because it is carried out by a minor who has reached the age of fourteen, but without the consent of a parent or guardian, each party must return to the other party anything they have taken from the other party and where the return of the same thing is not possible, they must pay its value to the other party. In addition, the party that has had the capacity to act is obliged to compensate the minor for the damage he has suffered for the reason that the legal transaction is found or declared invalid.

Article 109

When a legal transaction is declared invalid for the reason that it is carried out by a person who is totally deprived of the capacity to act or because it is carried out by a person whose capacity to act is limited and without the consent of his guardian, or for the reason that it is carried out by a person who at the time of executing the legal transaction was not aware of the importance of his transactions, each party must return to the other party anything they have taken from it and, where the return of the same thing is not possible, they must pay its value to the other party. In addition,

the party that has had the capacity to act is obliged to compensate to the other party the damages that this party has suffered because of the legal transaction declared invalid, if they knew or should have known that the other party had not the capacity to act or was not aware of the importance of its transactions.

Article 110

When a legal transaction is declared invalid for the reason that one of the parties was in error, each party must return to the other party anything they have taken from the other party and where the return of the same thing is not possible, they must pay its value to the other party. In addition, the party that has requested the legal transaction be declared invalid is obliged to pay the other party the damage suffered by that party for the reason that the transaction is declared invalid, except the case where they prove it that it is not their fault that they have fallen into error or that the other party knew or should have known about the error.

Article 111

When the cause of invalidity affects only a part of the legal transaction, it remains valid in its other parts, unless, according to the content of the legal transaction, these parts represent an indivisible relationship with the invalid part of the legal transaction.

TITLE IV
LAPSE OF LAWSUITS AND DECLINE OF RIGHTS

CHAPTER I
GENERAL PROVISIONS

Content

Article 112

The right of a lawsuit that is not filed within the period of time prescribed by law, is extinguished and cannot be realized by the court or other competent body.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated 31.05.2011, referring to the interpretation of Article 112 of the Civil Code, reasoned as follows:

> […] From the content of this provision, it is shown that the statute of limitations for filing a lawsuit always involves two essential conditions or elements: a) the passing of a specified period of time, and b) the failure of the right holder to exercise this right during this period. The first condition constitutes what is known as the statute of limitations period, and the second condition consists of the inaction of the right holder in cases where he could and should have acted.
>
> 19. The essential element of the statute of limitations is not the mere passage of time, but rather the inaction/passivity of the right holder in defending, within the period prescribed by law, his violated or denied right.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of Article 112 of the Civil Code, also reasoned as follows [*references from the text of the decision are omitted*]:

> 99. The statute of limitations is a legal fact of the category of events, the verification of which brings consequences of a extinguishing nature, these consequences being related to the right to use one of the basic and most important means of protecting civil rights - the lawsuit. The law, while recognizing to individuals the subjective right to address the court through a lawsuit, at the same time limits the exercise of this right by setting certain time limits, deemed by the legislator to be reasonable and sufficient for the exercise of this right. The failure to exercise the right within these time limits causes the subject to lose the right to address the court, thus losing the right to compel the other party to fulfill its obligation through a court decision.
>
> 100. The constituent elements of the statute of limitations are two: the inaction of the entitled (*holder*) of the subjective right and the passing of the period within which he should have exercised this right. Thus, the statute of limitations is the loss of the right to file a lawsuit due to the expiration of the time limits set by law.

[...] The reason why the legal regulation relates with the unreasonable causes of the holder the extinguishment of the subjective right lies in the need for certainty in legal relationships. When a subjective right is not exercised, people form the belief that it does not exist or has been abandoned.

Lawsuits that do not lapse

Article 113

Do not lapse:

a) The lawsuit for reinstatement or protection of a personal non-property right, besides the exceptions as provided by law;

b) Recognition claims;

c) The lawsuit of division between the co-owners;

ç) The lawsuit for return of the amount deposited in the bank;

a) Other lawsuits prescribed in special legal provisions.

Requirements for the mandatory execution of the decisions that are related to lawsuits, for which the statute of limitation does not apply.

Time limits for statute of limitations

Article 114

When it is not otherwise provided in the law, all lawsuits between legal persons, between them and natural persons and between natural persons themselves lapse within ten years.

Article 115

(Letter "e" is added by Law no. 17/2012, dated 16.2.2012, Article 1)

Lapse within the time limits of:

a) six months, lawsuits for the payment of penal evaluating conditions;

b) one year, lawsuits arising from contracts of delivery;

c) six months, lawsuits arising from direct transportation of goods and passengers by rail, vehicle or aircraft and one year for the same lawsuits arising from maritime or mixed transports;

ç) two years, lawsuits for payment of compensation under the contract of insurance and reinsurance, as well as the respective amount deriving from compulsory insurance;

d) three years, lawsuits for payment of rent of apartments, shops, bars and other real estate;

dh) three years, lawsuits for compensation of non-contractual damage and lawsuits for the restitution of property benefits gained without a title;

e) one year, lawsuits for compensation of non-property damage, for violation of honor, personality or reputation.

Other lawsuits lapse within certain specific time limits defined in this Code or other laws.

Article 116

The agreement of the parties to amend the time limits of the statute of limitations and any provisions of this chapter is invalid.

Article 117

The limitation period starts from the date when the subject acquires the right to sue.

Article 118

In the contractual obligations concluded with an execution deadline, the statute of limitation to file a lawsuit starts from the day when this deadline is met.

When the obligation consists of periodical payments, for each of them the limitation period shall start separately.

For contractual obligations concluded without a deadline and for obligations executed at the creditor's request, the limitation period starts from the day the obligation arises.

Article 119

For the revendication of a thing, the limitation period to file a lawsuit starts from the date when the owner has been or should have been aware of the infringement and the infringer of his right.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated 31.05.2011, have raised the issue for unification as follows: "Given the nature of the action for reclaiming property and the specific characteristics of the right of ownership, is the action for reclaiming property subject to prescription or not?" In this regard, the Joint Colleges of the Supreme Court decided that:

> The action for reclaiming, property as stipulated by Article 296 of the Civil Code, is by its nature an action that is not subject to prescription.

In this decision, the Joint Colleges of the Supreme Court reasoned for the reached conclusion, among others, as follows:

> [...] Ownership, as an absolute relationship, is erga omnes, and in this relationship, there is no "counter-interested" party (except in the case of acquisitive prescription), a subject that could benefit from prescription.
>
> If we were to accept that the reclamation action is subject to prescription, we would be faced with a situation where the owner (recognized as such) would not have the possibility to exercise his rights over the item due to the expiration of the deadline, while the possessor of the item (unlawful and even in bad faith) would be allowed to enjoy the item peacefully, undisturbed by the owner, who, as we said, would be unable to act due to the passage of the extinguishing prescription period. Moreover, in this way, the unlawful possessor would absurdly be granted the possibility of becoming the owner of the item through the passing of acquisitive prescription without title (Article 169 of the Civil Code).
>
> Such an interpretation of the law would go against its purpose and would lead to consequences that contradict its very function.
>
> It is clear, therefore, that the interpretation of the law (provision, principle, institution, etc.) must be made in accordance with the purpose of the law and to fulfill its basic functions [such as security and justice].
>
> [...]
>
> [...] The Joint Colleges consider that the non-prescription of the reclamation action arises from the permanent and stable nature

of ownership, which means that ownership remains such even when it is in the possession of any third party, who has not acquired ownership through juridical acts of alienation or by any other lawful means.

[...]

30.1. The ways of acquiring ownership are simultaneously the ways of losing ownership. This situation should not be confused with the situation when the extinguishing prescription period for certain claims has passed.

30.2. Acquisitive prescription (with or without title) is one of the ways of acquiring ownership, as foreseen in Articles 168 and 169 of the Civil Code. If the conditions set forth in these provisions are met, the action for reclamation is dismissed, not because of the extinguishing prescription, but because this way of acquiring ownership constitutes the legal cause for the previous owner's loss of ownership rights over the item.

30.3. Even in cases where a person does not use the item for a period exceeding 20 years and ownership over this item is acquired by another person because of the fulfillment of the conditions set in Article 169 of the Civil Code, the first person loses ownership not due to the extinguishing prescription, or due to non-use of the item for over 20 years, but because the other person acquired ownership through acquisitive prescription.

31. In the reasoning above, the Joint Colleges consider that in such cases, it is not the prescription of the reclamation action that causes the dismissal of the lawsuit, but the fact that the plaintiff has lost the right to ownership because the defendant acquired ownership over the item through acquisitive prescription.

[...]

[...] The Joint Colleges reiterate:

i. The right of ownership is an absolute right, unlimited in time, and may be exercised by the holder at any time. Accepting that the right of ownership is lost through extinguishing prescription would mean imposing time limits on the exercise of this right, thus restricting the owner's right with specific time limits, which would be in contradiction with the very concept of the right of ownership.

ii. The right of ownership is a right with permanent and continuous character, meaning it exists at all times, and the failure to enjoy the item by the owner or the failure to exercise this right for a certain period by the owner, regardless of the period, does not lead to the extinguishment of the right of ownership.

iii. A valuable argument that ownership is not extinguished through extinguishing prescription is the distinction between this institution, as a legal fact of the category of events, which causes the loss of the right of action, and acquisitive prescription as a means of acquiring ownership. Acquisitive prescription under the conditions prescribed by law may lead to the emergence or acquisition of ownership rights, while extinguishing prescription, for no reason, can never lead to the loss of ownership rights, as it is closely related (in the field of civil law) to the loss of the right of action, not to the loss of ownership rights (as a subjective right).

37. As mentioned above, the Joint Colleges consider that the non-prescription of the reclamation action means that it can be raised at any time, regardless of the period that has passed since the moment when the owner of the item did not exercise possession over it, and as long as the ownership right over this item has not been transferred to another subject for some other legal reason, as in the case of acquisitive prescription. [...]

Article 120

Regarding the request for the compensation of non-contractual damage, the limitation period to file a lawsuit starts from the date when the injured party has been or should have been aware of the damage suffered and of the person who has caused it.

Article 121

For the restitution of the amount of money or the thing that is earned or saved without cause, the limitation period to file a lawsuit starts from the date when the injured party has been or should have been aware of the profit or savings without cause that the person concerned has realized.

Article 122

To request an inheritance, the limitation period to file a lawsuit starts from the date of opening of the inheritance.

Article 123

Regarding lawsuits for restitution, the limitation period to file a lawsuit starts from the date when the plaintiff has paid voluntarily, based on a legal or contractual obligation, the third party, for the guilt of the defendant, the amount of money or the thing that is requested through this lawsuit, or from the day the decision of the court or relevant arbitration is given from which the lawsuit of regression arises.

Article 124

A statute of limitations for the main request of the lawsuit causes the statute of limitations even for requirements derived from the main request, although the relevant deadline for them is not met.

Request of the interested party

Article 125

The expired statute of limitations cannot be considered by the court or other competent authority on its own initiative, but only at the request of the interested party.

Waiver of statute of limitations

Article 126

Waiver of statute of limitations is allowed only after its limitation period has expired.

Article 127

The claim that the limitation period has expired can be exerted by the creditors and by anyone who has an interest, in cases where the concerned party has exerted it itself.

Fulfilling the obligation after the limitation period has expired

Article 128

The debtor who has fulfilled his obligation after the statute of limitations had expired, cannot request the restitution of the amount of money or the thing given voluntarily even if he was not aware that the limitation period had expired.

CHAPTER II
SUSPENSION AND TERMINATION OF THE STATUTE OF LIMITATIONS

A. Suspension of the statute of limitations

Article 129

The statute of limitations is suspended:

a) Between spouses until the day the judicial decision on the dissolution of marriage is final;

b) Between children and parents while they exercise parental rights;

c) Between persons who are under guardianship and their guardians until the guardianship continues;

ç) For the claims of persons whose property has been put into administration, against the respective administrators appointed by the court or other competent state authority, until the final accounts report is approved;

d) For claims of minors and other persons who do not have the capacity to act, until their representative is appointed or they acquire this capacity and for six months after their representative is appointed or they have acquired the capacity to act;

dh) For claims of a legal person against its administrators, while they continue this task at it;

e) For claims with object the relevant compensation stemming from injury or by causing death, suspension of the limitation continues from the day the request is submitted to the state social security body and up to the day the pension is assigned or that request is rejected;

ë) Due to force majeure.

Article 130

The period of suspension is not counted in the period of limitation. When, after the disappearance of the cause of suspension, the time left for the period of limitation to expire is shorter than six months, it shall be extended up to six months.

B. Interruption of the statute of limitations

Article 131

The statute of limitations is interrupted:

a) By every obligatory transaction of a natural or legal person that expresses the recognition of accurate and complete right of the creditor;

b) By presentation of the claim, counterclaim or objection, even in a court or arbitration that is not competent from material or territorial perspective to review the case;

c) By any transaction that puts the debtor in behind time;

ç) By submitting a request for mandatory execution of the judicial decision or concerned arbitration and any other executive title.

Article 132

Interrupted statute of limitation against one of the solidary debtors, or one of the spouses in an indivisible obligation, extends even to each of these other debtors.

Article 133

The interrupted statute of limitation against the principal debtor extends to the respective trustee.

Article 134

The time elapsed before verification of the cause of interruption is not counted and after the disappearance of this cause, a new period of limitation begins.

Article 135

When the statute of limitations is interrupted due to submission of a claim or counterclaim, the new period of limitation begins from the day that the decision by which the case has been settled on its merits becomes final.

When the claim is rejected without the case being solved on the merits, or the case is suspended, the statute of limitation is not considered as interrupted.

Calculation of limitation periods

Article 136

The limitation period of the claim, which is set in weeks, months or years expires with the passing of that day of the last week or last month that has the same name or number with that of the day on which the limitation period has started and when there is no such a day in the last month, the period ends at the end of the last day of this month.

When the last day of the limitation period falls on a holiday, the working day following that holiday is called as the last day.

CHAPTER III
PRECLUSIVITY

Article 137

When a right must be exercised within a preclusive period, the provisions governing the termination of the statute of limitations do not apply. Also, causes of suspension do not apply, aside from exceptional cases, when the law itself allows the suspension of the preclusive period.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of Article 137 of the Civil Code, reasoned, among other things, as follows [*references from the text of the decision are omitted*]:

> [...] Unlike the expiration of the extinguishing prescription period, when the preclusive period lapses, in the cases provided by law, the subjective right is extinguished in itself. In this case, the passivity of the right holder does not only result in the loss of the right to file a lawsuit in court, but it also leads to a more severe consequence, which is the complete loss of the subjective right. Therefore, by operation of law, the holder of the right is no longer considered to possess that right.

Article 138

Any agreement, wherewith preclusive periods are determined, that make it extremely difficult for one of the parties to exercise its respective rights, is invalid.

Article 139

The parties cannot change the legal precepts governing precluvisity, nor can they waive completed preclusive period when this period is defined by specific legal provisions.

Article 140

Completed preclusive period is taken into consideration by the court or competent arbitration on its own initiative, even without being asked by the interested party.

PART II
THINGS AND OWNERSHIP

TITLE I
THINGS

Legal definition of a thing

Article 141

A thing is any object within the scope of the right of ownership or other real right.

The Joint Colleges of the Supreme Court, in their unifying decision no. 23, dated 01.04.2002, regarding the types of real rights, have determined that:

> […] the pre-emption right of the former owner (or his heir), as provided by Article 21 of Law No. 7698 dated 15.04.1993, being a real right, and as such, according to Article 761 of the Civil Code, can be disposed of by transferring it to third parties through a donation.
>
> [...]
>
> [...] even the right to compensation for former owners, according to Law No. 7698 dated 15.04.1993, should also be considered a real right established by law. Being such, it can be disposed of by donation from its holder.

Types of things

Article 142

Things are movable and immovable.

Immovable things are land, water sources and flows, trees, buildings, other floating constructions connected to the land and anything that is embodied steadily and continuously to the land or building.

All other things, including any other natural energy, are movable things

Article 143

The provisions dealing with immovable things shall also apply to the real rights that have as their object immovable things, as well as related claims, unless otherwise provided by law.

The provisions dealing with movable things apply to all other rights.

Registration of things

Article 144

Immovable things and real rights over them are recorded in the real estate registers.

Those movable things, the registration of which is expressly required by law, are also registered.

Fruits of the thing

Article 145

Natural fruits of a thing are the products derived from it. While not separated from the thing, they are part of it.

Civil fruits are derived from things as a result of the enjoyment of rights that people have on them.

Civil fruits are obtained on the basis of duration of rights and when they become claimable.

Components of the thing

Article 146

Everything that is attached to the thing and cannot be separated from it without causing substantial damage is a component of this thing.

Accessories

Article 147

Accessories are those movable things that are intended to serve a principal think consistently or to decorate it.

This designation is made by the owner of the principal thing or the person who has a real right over it.

Article 148

Any ownership over the principal thing includes also its accessories, unless it is otherwise provided.

Accessories can also be the subject of a separate ownership.

Accessories do not lose this quality when they are temporarily separated from the principal thing.

TITLE II
OWNERSHIP

CHAPTER I
GENERAL PROVISIONS

Content of ownership

Article 149

Ownership is the right to enjoy and possess things freely, within the limits defined by law.

The Joint Colleges of the Supreme Court in the unifying decision no. 5, dated 31.05.2011, regarding the legal concept of ownership, reasoned as follows:

10. The character and content of the right of ownership in the civil-legal sense is sanctioned in Article 149 of the Civil Code, according to which "*Ownership is the right to enjoy and freely dispose of things, within the limits set by law*." From this provision, as well as from

the content of Articles 296, 302, and 304 of the Civil Code, it results that possession, enjoyment, and disposal are the three main powers of the owner.

11. The law obliges all third parties not to carry out actions that violate the powers of the owner, i.e., actions that prevent the owner from exercising the free possession, enjoyment, and disposal of his things.

12. Ownership, as a subjective right, has the following characteristics: patrimonial, absolute, real, stable, and continuous. The object of the right of ownership is things. The holder of the right of ownership has an unlimited number of persons as obligated parties and exercises his right without the mediation of other persons. He has the right to demand the thing from any possessor or illegal holder, even if they act in good faith. The right of ownership has no expiration in time; it does not end with the passing of a certain period. The owner continuously and permanently exercises his right of ownership over the thing by enjoying and disposing of it freely, within the limits set by law. Furthermore, the right of ownership of the owner over the thing is independent of third parties. The will of third parties is not significant for the owner.

13. When the powers that the owner has over the thing are opposed or infringed upon by third parties, wholly or partially, the law recognizes the owner's right to use legal remedies, among which the main one is litigation.

The Civil College of the Supreme Court in the unifying decision no. 00-2022-4596 (393), dated 26.10.2022, regarding the understanding of the right of ownership, reasoned among other things as follows [*refernces from the text of the decision are omitted*]:

41. The right to property in general and the right of ownership in particular form the basis of the economic system in our Republic. It is a fundamental constitutional right of every individual. The constitutional and legal regulation takes into consideration its dual function, both private and social, which the right of ownership carries within itself. The private function has its impact on the normal enjoyment of individual liberties and rights. The historical and current understanding of guaranteeing property is the understanding of a fundamental right that is inextricably linked to individual freedom.

Property also has a distinctive social character, as its use should serve public welfare. As long as the function of property is a means of preserving personal freedom, it enjoys special protection. On the other hand, the legislator may impose restrictions on property the greater its social function. In accordance with the considerations of the jurisprudence of the Constitutional Court over the years, the constitutional guarantee of property cannot accept disproportionate restrictions, i.e., restrictions that cannot be justified by social considerations.

Ownership on components of the thing

Article 150

The ownership of the components of a thing belongs to the owner of the thing.

Ownership on the fruits of the thing

Article 151

The natural fruits produced by the thing belong to the owner of the thing, unless their ownership is passed to others. In this case, the ownership is acquired after the fruits are separated from the thing.

The person who gets the fruits shall, within their value, compensate the expenses made for their production and gathering.

Affiliation of things

Article 152

The things belong to natural persons, legal persons and the state.

Types of public property are defined by law.

The rights and obligations of the owner

Article 153

(Amended by Law no. 8781, dated 03.05.2001, Article 21)

No one may be expropriated or restricted to the right to exercise the right to property which is equivalent to expropriation, unless this is required in the public interest and always against fair compensation.

Article 154

The land ownership rights extend to such heights and depths that are useful for the exercise of such ownership, under the conditions defined by law.

Article 155

The landowner, after first asking the neighbour to cut the branches and roots of trees that extend into his land, has the right to cut them himself, if they cause harm, as well as collect fruits and use them for himself.

Fruits that fall from the trees on the land, belong to the owner of the land where they have fallen.

Article 156

The owner of a land that is located near streaming waters or a public water source has the right to use them to the extent that it does not harm the interests of other landowners, unless the use is regulated by specific provisions.

Article 157

The owner of a land may request the owner of the adjoining land at any time, to place at common expenses visible marks at common boundaries of their lands or fix them when they are damaged.

When the boundary between the two lands is unclear, and the owners do not define it themselves, each of them may require its correction by the court.

Article 158

When trees and shrubs are planted in borders of the properties, the owners are required to keep the distances defined by specific provisions, and when there are no such provisions, defined by the customs of the country, unless the neighboring owner has allowed it himself or when the boundary line is a road or public water stream.

In the absence of such rules, the distances are: three meters for high body trees and two meters for other trees.

These distances do not apply to trees and bushes, whose height does not exceed the height of the parting wall between the properties.

Article 159

The owner is free in using the thing, without prejudice to the rights of others and within the limits set by law or by good customs. He cannot create disturbances to neighbors such as noise, vibration, intake of smoke, heat, steam, or other similar disturbances that impair their enjoyment of property by changing the courses, amount or quality of the water flowing in his land or groundwater, as well as to use waters which communicate freely with the land of others, unless those disturbances do not exceed their usual level.

The owner in the exercise of his rights, is forced to take action to preserve and protect the environment around.

The Joint Colleges of the Supreme Court, in the unifying decision no. 5, dated May 31, 2011, analyzed the rights of the owner, including the use of the property, determining that:

> 25. The Joint Colleges evaluate that the failure to file a lawsuit to protect a right should not be equated with the failure to exercise the right of use of the property. The absence of exercising the right of use by the owner may create circumstances in which another person acquires original ownership of the property, but it does not bring about the extinction of the right to sue.
>
> 25.1. The failure to use the property by the owner is an expression of the freedom granted to them, and it is a manifestation of the extent of the rights belonging to the owner.
>
> 25.2. Even if the property object of ownership is not used, this non-use is a manifestation of the owner's will. Therefore, even the non-use of the property is part of the owner's rights.
>
> [...]
>
> [...] The right of ownership cannot be lost due to absence of use, even if the owner has not used their property for a long period of time. The owner does not lose the right to exercise the lawsuit for the recovery of ownership as long as the defendant has not acquired ownership through adverse possession.

Article 160

Owners must adhere to the rules defined in regulatory plans or specific provisions for the construction of new buildings, their reconstruction or

change, for the distances between buildings, for opening the windows, wells, holes in the ground and other works of this kind.

Article 161

The owner is obliged to collect the water pouring off the roofs of his buildings, so that they do not drip on the land of others. Spills in a public water stream can be done when not prohibited by the rules defined by the competent authorities.

The owner is obliged to ensure that water and debris coming from his land do not flow into the channel or the land of another, unless an agreement in the contrary exists between them.

CHAPTER II
ACQUISITION AND LOSS OF OWNERSHIP

Transfer of ownership

Article 162

The right to ownership and other rights to things are transferable, unless prohibited by law or by the nature of the right itself.

Methods of acquiring ownership of property

Article 163

Ownership of property is acquired through manners defined in this Code and other manners defined by specific law.

The Civil College of the Supreme Court, in the unifying decision no. 00-2022-4596 (393), dated 26.10.2022, regarding the understanding of the ways of acquiring ownership, reasoned that:

> [...] the ways of acquiring ownership are not competitive but they exclude each other.

The Joint Colleges of the Supreme Court, in the unifying decision no. 24, dated 13.3.2002, addressed the issue of whether the law on the restitution and compensation of properties to former owners and the law on politically persecuted individuals constitute modes of acquiring

ownership. In this decision, the Joint College of the Supreme Court determined that:

> Law No. 7514, dated 30.9.1991, "On the Acquittal, Amnesty, and Rehabilitation of Former Politically Persecuted Persons," and Law No. 7698, dated 15.04.1993, "On the Restitution and Compensation of Properties to Former Owners", do not constitute new modes of acquiring ownership but rather serve as a correction of past injustices, and for this purpose, they abrogate ipso lege all previous legal acts through which properties were unjustly taken from their rightful owners. These laws do not create a new legal situation (i.e., they do not have a constitutive effect) but instead restore legality and justice.
>
> The abrogation of the aforementioned acts results in the restoration of the parties to their previous state, correcting, to the greatest extent possible, the illegality concerning the most fundamental real right - the right of ownership (but not other real rights, let alone obligations). From this perspective, the return to the previous state is not complete but partial (*restitutio in parte*).
>
> Through these normative acts, former owners or their heirs are recognized as rightful owners, and the modalities for the effective enjoyment of this right are defined. Due to the prolonged period of illegality and the objective impossibility of physically returning all confiscated properties, the law provides for compensation as an alternative in cases where physical restitution is not feasible.

Acquisition of ownership of property by contract

Article 164

Ownership of property is acquired by means of a contract, without having to hand over the thing. For things defined in numbers, weight of measure, the handover is required.

Acquisition of ownership of property by inheritance

Article 165

Acquisition of ownership of property by inheritance is done in accordance with the conditions provided for in the provisions of part three of this Code.

A bona fide acquisition of movable things

Article 166

The person who on the basis of a legal transaction for the transfer of ownership has acquired against compensation in good faith a movable thing, becomes the owner of the thing, even if the alienator was not the owner.

However, the acquirer, even in good faith, does not become the owner of the thing, if it is stolen.

The acquirer in good faith becomes the owner of money and securities to the bearer, even if they were stolen to or lost by the owner or the public legal person.

The above provisions do not apply to movable things which are listed in public registers.

Property may be acquired free of the rights of others over the thing, if these rights are not derived from the title and the good faith of the acquirer.

Article 167

If the ownership over a movable thing passes to several people through contracts, the owner becomes the person who has gained possession of the thing in good faith, even if the contract is of a later date.

Adverse possession

Article 168

A person, who has acquired a thing in good faith, based on a legal transaction to transfer ownership and which is not prohibited by law, becomes the owner of this thing, after continuous possession for five years when the thing is movable and ten years when it is immovable.

When possession is not in good faith, the terms of uninterrupted possession double. Possession is considered uninterrupted even when the acquirer of the thing has given the possession to another person.

A thing which is an inalienable public property cannot be acquired by adverse possession.

The Civil College of the Supreme Court, in its unifying decision no. 00-2022-4596 (393), dated 26.10.2022, regarding the interpretation of Article 168 of the Civil Code, has raised the following issues for unification:

1. Should the term "juridical act for the transfer of ownership", as referred to in Article 168 of the Civil Code, be understood narrowly, encompassing only juridical acts as defined in Article 79 of the Civil Code, or should it be interpreted broadly to include any other lawful act serving as a valid title for the transfer of ownership?

2. What is the meaning of the juridical act that is "...not prohibited by law"? Which violations of legal norms fall under this category? How does Article 168 of the Civil Code operate concerning legal acts that violate provisions causing either relative or absolute invalidity?

Regarding the issues raised for resolution, the Civil College of the Supreme Court, in this unifying decision, has established the following rule of law:

1. The term "juridical act intended for the transfer of ownership" used in Article 168 of the Civil Code shall be understood as referring only to juridical acts as defined in Article 79 of the Civil Code, thereby excluding from the scope of this provision any other different title containing the acquisition of ownership rights.

2. As a general rule, violations that, according to the Civil Code, result in the relative invalidity of a juridical act are excluded from the scope of Article 168.

3. Not every legal violation that causes absolute invalidity of a juridical act falls within the concept of an act "prohibited by law" under Article 168 of the Civil Code. This concept includes only those absolutely invalid juridical acts that contravene a mandatory or prohibitive legal norm protecting a public interest, in accordance with the criteria set forth in Articles 92 and 677 of the Civil Code.

   In the above-mentioned unifying decision, several legal concepts derived from the wording of Article 168 of the Civil Code have been addressed. Below is a selection of the theoretical analyses provided by the Civil College of the Supreme Court:

   57. A title is the legal cause capable of transferring ownership, proving and justifying possession as an owner, or even the good faith of the beneficiary in this mode of acquiring ownership. A title may be considered capable of transferring ownership only when the object identified within it sufficiently corresponds to

the property over which possession has actually been exercised, in terms of quantity and the legal requirements.

58. Therefore, there must be a sufficient comppliance between the factual and legal identity of the possessed object and the one claimed to be acquired through acquisitive prescription based on title. [...]

59. The acquirer of an object becomes its owner from the moment the prescriptive period is completed, meaning that regardless of how late the claim of the new owner is brought, the court's decision under Article 170 of the Civil Code has a declarative rather than a constitutive nature. In other words, it confirms an existing legal relationship rather than creating a new one. The date marking the completion of the legally prescribed period constitutes the final legal moment for the transfer of ownership from the former owner to the new owner. [...]

[...]

73. From the content of Article 168 of the Civil Code, it is clear that this provision, as a title upon which ownership acquisition may be claimed, refers only to juridical acts while excluding all other ownership titles as part of the category of legal facts, which serve as the basis for acquiring ownership through title based acquisitive prescription.

Article 169

The person who quietly and continuously possessed by behaving as if he owned an immovable property for twenty years becomes its owner.

Registration of the thing acquired by adverse possession

Article 170

A person who has acquired an immovable thing by adverse possession has the right to file a lawsuit against the former person or his heirs for recognition of his ownership and, according to the relevant court decision, to request the registration of the thing by the competent state body.

Suspension and termination of adverse possession

Article 171

Suspension and termination provisions for the limitation of lawsuit also apply to adverse possession.

Adverse possession is interrupted by loss of possession. It is not called an interruption when the possessor comes back in possession within six months or later through a lawsuit filed within six months.

Ownerless things

Article 172

Ownerless things are those things that have no owner or their owner has abandoned the right of ownership.

Ownerless things fall to the state. Passage of ownership to the state is made by decision of the competent court.

Acquisition of ownership by connection and mixture

Article 173

Crops, buildings and any other object that is on or under the surface of the land belongs to the land owner, unless otherwise provided in this Code and other legal provisions.

Article 174

The owner of the land who has made constructions and other works and planting with material belonging to another person is obliged to pay their value, unless their separation and return is not required and when it can be done without causing substantial damage to the buildings or planting performed.

When the separation of materials is possible and when the owner of the land has acted in bad faith, he must compensate the owner of the material for the damage suffered.

Article 175

When buildings and other works and plantings are made by a third person with his own materials on the land of another person, the respective owner has the right to retain them or require the obligation of the other person to take them away at his own expenses, and, where appropriate, to compensate the damage.

When the owner of the land agrees to retain them, he is obliged to pay the value of the materials and labor or the increase in value of the property.

The owner of the land cannot require the removal of buildings and plantings when they are done at his knowledge or good faith by a third

person, and when six months have passed since the day when the owner received notice of these buildings and plants.

When a building is constructed in good faith on the land of another person and its value is greater than the value of the land, the person who constructed the building can be recognized as owner of the land by decision of the competent court.

Article 176

When two or more movable things belonging to different owners have been connected or mixed into a single thing that cannot be separated without causing great harm to each other, or when such separation requires work and excessive costs, the owners of each thing become co-owners of that new thing in proportion with the value that the parts of the thing had at the time of their connection or mixture.

When a movable thing is connected to or mixed with another thing in such a way as it seems to be an accessory part of it, the new thing belongs to the owner of the principal part, who is obliged to pay the respective value and, when appropriate, to compensate the damage caused.

Acquisition of ownership by processing

Article 177

A person who creates a new movable thing through his work using materials belonging to another person, regardless of whether the material can take its first form or not, becomes the owner of the new thing, if the value of the work is greater than that of the material, provided that he pays the value of the material.

Otherwise, the new thing is acquired by the owner of the material, by paying the value of work.

When the creator has acted in bad faith, the new thing passes to the owner of the material by court decision, even if the value of the work is greater than that of the material, but by paying the value of the latter.

Addition to land by alluvium

Article 178

Addition to land by deposition and addition of soil through the operation of natural causes over the banks of rivers and watercourses belong to the riparian owner, unless otherwise provided by law.

Relicted lands

Article 179

The dry land uncovered by a watercourse which withdraws through the operation of natural causes from one bank to the other bank of the watercourse belongs to the owner of the land from which the watercourse is withdrawn.

Relicted lands arising from river beds

Article 180

Islands and relicted lands arising from river beds are public property.

Article 181

When a river or water stream changes its bed and leaves the old channel, the dry land uncovered is owned by the riparian owners of both banks of the river or water stream, who own it to the centre of the dry stream bed.

LOST OR FOUND THINGS

Reporting found things

Article 182

Any person who has found a thing lost including livestock separated from the bunch is obliged to immediately inform the owner or the person who has lost it and, if the owner is unknown, turn it over to the municipality of commune in the territory of which the thing was found.

The municipality or commune is obliged to announce immediately the thing found.

Claiming the thing and compensation of costs

Article 183

The owner or the person who has lost the thing has the right to claim it within six months from the day the respective municipality or commune has announced the finding, after having paid the expenses incurred for the preservation of the thing and a reward for the person who found the thing at the extent of 10% of the value of the thing, or of the price

obtained, when because of the circumstances presented, selling it was necessary.

If there are objections for the value of the thing, the dispute is resolved by the court.

The municipality or commune may permit the person who found the thing to temporarily keep it, who is compensated for the expenses incurred for the preservation of the thing.

The things lost must be stored and maintained with proper care.

Acquisition of ownership by the finder

Article 184

When the owner or the person who has lost the thing do not appear to receive it within the period prescribed in Article 183, the thing or the sale price passes under the ownership of the person who found it, who compensates costs of preservation.

Things found in a premises

Article 185

Things found in a public and private premises as well as in a means of transportation, must be immediately handed over to the administrators of the premises where they were found, who save it for three days. When the owner or the person who lost the thing do not appear, the administrators submit it to the relevant municipality or commune.

Treasure

Article 186

Any precious thing, which seems clearly to have been in the ground or hidden for a long time and the owner cannot be traced back is called a treasure.

The treasure belongs to the owner of the moveable or immovable thing where it was found, except from the things of scientific, cultural, archaeological value as provided by Article 187 of this Code.

The person who finds the treasure has the right to a reasonable compensation that should not exceed half of its value.

State ownership on a category of movable things

Article 187

Movable things with cultural, historical, archaeological, ethnographic value and rare natural objects of scientific importance that are discovered, break or extracted from the ground or water, are transferred into state ownership.

The owner, in whose property such items have been discovered, is obliged to allow the excavation being compensated for damages suffered.

The person who discovered or found such things is entitled to receive a reasonable reward from the state.

Acquisition of property by occupancy

Article 188

Ownership of abandoned movable things and ownership over wild animals, birds, fish, wild fruits and the other movable things of nature is acquired by occupancy under the terms defined by law or in specific provisions.

Swarm of honey bees

Article 189

The owner of a swarm of honey bees has the right to track and take it from the land of another, awarding the damages caused.

When the owner of the swarming honey bees did not track it within three days, or when it has entered into another beehive, the ownership on the swarming honey bees is transferred respectively to the owner of the land where the swarming honey bees stayed or to the owner of the beehive.

Acquisition of property through expropriation

Article 190

(The first sentence is amended by Law no. 8781, dated 03.05.2001, Article 22)

Things may be expropriated only in the public interest recognized by law and only against a fair compensation. They become the property of the state or other public entities in favor of which the expropriation is done.

Loss of ownership

Article 191

Ownership is lost when it is acquired by another or when it is renounced.

Renunciation of ownership of immovable property in favor of another is valid when it is done by a notarial act and registered.

CHAPTER III
REGISTRATION OF IMMOVABLE PROPERTY

Article 192

Immovable things and facts relating to their legal status are recorded in the real estate registry. Registration is based on a public act, a decision of a court or other competent state body, as well as in other cases provided by law.

Article 193

In the real estate registry must be registered:

a) Contracts for the transfer of ownership of immovable things and acts to their voluntary division;

b) Contracts by which ownership rights are created, recognized, modified or terminated over immovable things, the rights of usufruct, use and lodging, emphyteusis and servitude and other real rights;

c) Acts by which the above ownership rights be relinquished;

ç) Court decisions by which the quality of heir is recognized and the inherited property is acquired;

d) Acts by which is created a corporation or another entity of law that owns real estate or enjoys other rights in rem over them;

dh) Decisions of courts or competent state bodies that respectively contain the acquisition or recognition of ownership over immovable property, the division of immovable property or that declare legal transactions invalid for the transfer of ownership previously duly registered, as well as acts of judicial bailiffs for seizure of immovable property or selling them at auction.

The court verification of the fact of ownership is not registered.

Article 194

In the contract of donation of immovable property, registration takes the date on which the receipt is recorded, if this is contained in a separate act.

Article 195

Immovable property and real rights over them which are acquired or recognized under the provisions of this Code shall not be alienated and, where appropriate, be charged with burden, if they are not registered in public registers.

Article 196

The courts, notaries, judicial bailiffs and other state bodies are obliged to send for registration to the registration office that administers the immovable property register, a copy of the decision or act that contains acquisition, recognition, modification, termination of an immovable property right or a real right over it, or which declare legal transactions invalid for the transfer of ownership previously registered.

Article 197

The following must also be registered:

a) Leasing contracts for immovable things for a time over nine years;

b) Lawsuits for acquisition, recognition, modification or termination of property rights or other rights in rem over immovable property;

c) Lawsuits for division of common immovable property.

Article 198

The Ministry of Justice administers the activities of the public registry for immovable property.

Conditions, manner of registration and organization, as well as any procedure relating to this activity is regulated by a special law.

TITLE III
CO-OWNERSHIP

CHAPTER I
SHARED CO-OWNERSHIP

Definition and content

Article 199

There is co-ownership whenever one or more things and other real rights belong commonly to two or more persons.

The portions belonging to the co-owners shall be equal, unless the contrary is proved.

The rights and obligations of the co-owners shall be determined in proportion with their respective portions.

Rights of co-owners

Article 200

Each co-owner shall have the following rights:

a) To benefit from the income coming from the thing owned in common in proportion to his/her portion;

b) To use the thing owned in common in accordance with the purpose for which it is intended and in such a way not to prevent the other co-owners from using it according to their rights;

c) To alienate or dispose of in any other way his/her part in the thing owned in common, but when it is an immovable thing, he/she may sell his/her part only by respecting the right to pre- emption that the other co-owners have under Article 204 of this Code;

ç) To demand the partition of the thing owned in common, even if there is an agreement to the contrary, unless this division hurts the respective purpose or it is prohibited by law;

d) To demand the restitution not only of his/her part, but all the thing owned in common provided that it be delivered to all co-owners.

Obligations of co-owners

Article 201

Each co-owner is obliged that in proportion to his/her part to pay the necessary expenses for the preservation and enjoyment of the thing owned in common.

Article 202

When the thing owned in common is used for their own benefits by one or several co-owners, they are obliged to pay compensation to the other co-owners for the use of their share from the date the request for this compensation was notified in writing to them, or from the date of filing the lawsuit in the competent court.

Administration of the thing owned in common

Article 203

All co-owners, regardless of the value of their respective share, have the right to take part in the administration of the thing owned in common.

The thing owned in common shall be administered in accordance with the way approved by agreement of all co-owners, and when this agreement has not been reached, in accordance with the way defined by decision of the co-owners that own more than half of its value. The resolutions of the majority of the co-owners shall be binding even for the co-owners that will remain a minority.

This majority may decide to mortgage or leave in pawn the thing owned in common when this is necessary to ensure the return of the sums borrowed for its maintenance or reconstruction.

When this majority is not reached, or when its resolution is prejudicial to the thing owned in common, the competent court at the request of any of the co-owners shall order such measures as it may deem proper and, where appropriate, appoint a guardian for the administration of the thing.

Pre-emption right

Article 204

A co-owner, before selling his share in the immovable thing to a person who is not a co-owner, is obliged to notify the other co-owners in writing whether they want to buy the share under the same conditions that he would sell it to

a third person. If they do not respond within three months that they want to buy the share, the co-owner is free to sell his share to a third party.

He should make the new co-owner known to the other co-owners.

Creditor's right on the share of the co-owner

Article 205

Each creditor has the right to realize his credit on the portion belonging to the co-owner in the thing owned in common.

Article 206

Creditors and heirs of any of the co-owners may at their own expense take part in the division of the thing owned in common, but they cannot impugn any partition already executed, unless they have announced their impugnment before the division.

In the division of immovable property, notification for the impugnments mentioned in the preceding paragraph shall be registered before the registration of the request for division. Also, all the creditors, who have registered their claims or have acquired rights to the property that is being divided, should be called in such a division prior to the registration of the act of partition or the registration of the request for division.

Division of the thing owned in common

Article 207

Partition of the thing owned in common shall be made by agreement of all co-owners. When it is an immovable thing, the agreement shall be made by a notarial act. When this agreement is not reached, the partition shall be made by the court, calling all the co-owners in the trial. Partition of the thing owned in common is made with its physical division in accordance with the parts belonging to the co-owners, if such a division is possible and does not prejudice the relevant purpose of the thing. Inequality of the shares resulting from the physical division of the thing is compensated by a reward in cash.

When the thing owned in common cannot be physically divided, the court orders that it be sold at auction and its value be divided between co-owners according to the relevant parts, calculating the amounts they have to pay each other because of co-ownership relations.

However, instead of selling it at auction, the court, when some of the co-owners require it, orders that the thing be left with them, forcing them to

pay the co-owner who requires the division the value of his share in the manner and within the time periods specified in the court decision.

When the thing that cannot be physically divided is a dwelling house, the court leaves it under the above mentioned conditions to the part of the co-owner who lives there or is in need of this residential area more than others.

The Joint Colleges of the Supreme Court, in its unifying decision no. 22, dated 13.03.2002, addressed the issue of the judicial division of an illegal construction, determining the following:

> [...] Since this construction is illegal, it cannot be accepted that it generates legitimate interests. An unlawful act cannot be claimed to result in legal consequences.
>
> [...]
>
> Extensions or construction that has been carried out in violation of the regulation in force and has not been registered in the immovable property register cannot be the subject of judicial partition, and the interested person, since they do not represent a legitimate interest in this case, cannot be granted standing to file a lawsuit for the partition of the property.

Alienation of the thing owned in common

Article 208

Alienation of the thing owned in common can be made only at the consent of all co-owners.

CHAPTER II
CO-OWNERSHIP IN GENERAL

A. OBLIGATORY CO-OWNERSHIP

Shared facilities in buildings

Article 209

On the floors or separate units of the floors of a building that are owned separately to different owners, the following facilities, unless stated otherwise in the ownership act, shall be in their obligatory co-ownership:

a) The land on which the building is built, foundations, main walls, internal partition walls, stairs, halls, roof or terrace, chimneys, as well as all objects of the building that have such character and serve for shared use;

b) Wells, installation of water, electrical, gas, telephone and central heating installations, including pipelines and related lines, as well as various channels to the point of the branches inside separate units of floors.

Article 210

The right of each co-owner on the objects mentioned in the Article above is in proportion to the value of the floor or parts of the floor that belong to him, unless the title provides otherwise.

Relinquishment of the right on the objects above does not relieve the co-owner from the obligation to contribute to the costs of maintaining them.

Inseparability of shared facilities

Article 211

It is not allowed to divide shared facilities of the building, unless the division of any of them can be carried out without causing any difficulties in its use to any of the co-owners.

Composition of the Assembly and election of chairmanship

Article 212

The Assembly is composed of the owners of each floor or separated units of each floor, who own in common the shared facilities of the building.

At the first meeting of the Assembly, the members elect the chairmanship from among their ranks, which is charged to perform, in the name and on their behalf, all necessary actions for the ordinary administration and maintenance of shared facilities, except the actions that are only under the authority of the assembly, and to represent them in competent judicial bodies and in arbitration.

Meetings of the Assembly and the validity of decisions

Article 213

After the first organizational meeting, the meetings of the Assembly are

convened once a year. Other meetings can be called by its chairmanship or on the initiative of not less than 20% of its members.

Assembly can be opened and make decisions when the co-owners who have at least two thirds of the total shares are present in person or represented by proxy. When this number is not present, the meeting shall be adjourned and the next meeting will be held if the common majority of the co-owners participate.

Assembly decisions are made by a simple majority vote of the co-owners, unless a qualified majority is required in the provisions of this chapter or by specific provisions. When the number of votes is equal, the vote of the chairman is decisive.

Core competences of the Assembly

Article 214

The Assembly has the following core competences:

1. Approves regulations governing the apartment house, which is compiled by the model regulation approved by the Council of Ministers.

2. Creates the reserve fund for common expenses, setting the annual amount thereof.

3. Approves the expenditure estimates decided to be spent during the year, and the allocation of the amount between the co-owners.

Common expenses for ordinary maintenance, repairs and upgrades to these facilities are approved by the Assembly with a simple majority vote, while expenditures for major improvements or qualitative renovations are approved by a qualified majority of the co-owners that reaches at least 75% of the shares.

4. Appoints, when deemed necessary, the custodian of the building, setting his powers and salary.

5. Authorizes the chairmanship to insure, within reasonable limits, the facilities owned in common as well as to enter into other necessary contracts for maintenance, repairs and ordinary renovations, or, where appropriate, for major improvements or renovations of these facilities.

Article 215

Decisions made by the Assembly in accordance with the aforementioned provisions are obligatory for all co-owners.

The lawsuit against decisions of the Assembly

Article 216

When a decision of the Assembly is unlawful or prejudicial to the interests of any of the co- owners of these apartment houses, each co-owner has the right to file a lawsuit before the competent court for the invalidation of that decision within thirty days of its issuance. The filing of the lawsuit does not suspend implementation of the decision of the Assembly, unless the court has decided otherwise.

Obligations of the co-owners

Article 217

Each co-owner has the following obligations:

1. To pay the expenses for the preservation and enjoyment of the shared facilities of the building, for the rendering of services to joint benefit and for the changes imposed by the majority of co- owners in proportion to their share, unless otherwise agreed.
For facilities that serve the co-owners at different extent, the costs are borne to the proportion that everyone is using them.

2. Not to do constructions on the floor or the separation unit of the floor owned separately, which can cause damage to the shared facilities of the building.

3. To repair the damage to any of the shared facilities or pay the cost of its replacement that he or a member of his family has caused with guilt.

4. Not to do additions or modifications without the prior permission of the Assembly on the floor or separated unit of the floor owned separately, that could adversely affect the external appearance of the building.

Extensions on the top floor

Article 218

Construction of other floors or extensions on the top floor of a building can be realised by decision of a majority of 3/4 of the co-owners of the building.

Article 219

Awarding permission to make extensions or such constructions on the top floor is forbidden if the static conditions of the building do not allow it.

The co-owners may oppose the permission issued by the competent state authority for making extensions or such constructions on the top floor even when it is proved that they reduce the air or light for the lower floors or violate architectural appearance of the building.

Article 220

Those who are allowed to make extensions or other constructions on the top floor are forced to rebuild the terrace, which all or a part of the co-owners had the right to use.

Total or partial collapse of the building

Article 221

When the building collapses completely or in part that constitutes not less than three-quarters of its value, each co-owner may request that the land and materials be sold at auction, unless otherwise agreed.

When the building is damaged to a smaller extent, the Assembly decides on reconstruction of shared facilities of the building and each co-owner is obliged to contribute in proportion to its rights on those facilities.

Co-owner who does not want to participate in the reconstruction of the building, must sell the facilities owned only by him to the other co-owners or to one of them, according to the assessment to be made.

B. CO-OWNERSHIP BETWEEN FARM FAMILY MEMBERS

Article 222

Ownership on the property of the farm family members shall belong as a whole to its members, who through work or other rights acquired have contributed to the development and preservation of the agricultural economy.

Article 223

The farm family consists of persons who are related between them by gender, marriage, adoption or acceptance as its member.

Article 224

The farm family is represented in property relationships with third parties by the head of the family, who is elected by its members.

Article 225

Personal use items of the members as well as items which the member has earned through his personal income, by gift or inheritance are not included in the farm family property.

Article 226

The farm family member cannot alienate any part of the farm family property while it has not been divided.

Article 227

Each member of the farm family can request his/her own portion of the farm family property. It shall be determined by taking into account in particular:

a) The property that belongs to the whole family;

b) The number of family members;

c) His/her contribution to the creation or increase of the family's property, given the amount or effectiveness of this contribution, as well as the work and equipment given for the creation and maintenance of agricultural economy.

Article 228

Partition of the farm family property is made according to the rules specified in Article 207 of this Code.

When particular members request their own portion, it shall be evaluated and given in cash.

When the partition is required by more members of the farm family, in order to create another farm family, the portion can be given in kind, provided that agricultural land remaining with the separated families, must not be below the minimum of the unit's minimum for cultivation. Minimum unit for cultivation means the agricultural land which is necessary for maintaining an agricultural economy according to the natural conditions of the respective area or region.

Article 229

The farm family shall be held responsible for illegal actions carried out by its members in the exercise of duties resulting from the economic activity of the farm family itself.

Article 230

The farm family shall not be held responsible for the personal economic obligations of its members, including the head of the family. Creditors have the right to be paid by the share in the farm family income belonging to the debtor member and the part that belongs to him/her in the farm family property.

C. CO-OWNERSHIP BETWEEN SPOUSES

Article 231

Co-ownership between spouses is governed by Family Code provisions.

The Joint Colleges of the Supreme Court in unification decision no. 3, dated 03.02.2006, have considered, among other issues, the following questions:

> *What value does a donation contract between spouses have in relation to the co-ownership? Is the donated thing considered the exclusive property of one spouse, or does it mean that the other spouse gives full consent to any action the benefiting spouse takes with that property, including its transfer, or is this a fictitious juridical act that brings no consequence regarding the status of co-ownership, regardless of any disposition one spouse makes in favor of the other?*

In regard to the above, the Joint Colleges of the Supreme Court have determined the following:

> In the case of a donation between spouses of personal property of the donating spouse or property that is part of co-ownership, the donated item will pass to the exclusive property of the benefiting spouse. In these circumstances, these items do not belong to the community property (co-ownership) between the spouses. If the object of the donation contract is the transfer of ownership of an item, the other spouse becomes the beneficiary of the entire item, which passes into their exclusive property. In cases where

the object of the donation consists of items that are part of the community property between spouses, it will be considered that the object of the donation is the ideal share of the property in co-ownership, which, after the donation contract is concluded, merges with the existing share that the benefiting spouse had in the property, thus becoming exclusive property of the benefiting spouse. The owner of the donated item is solely the benefiting spouse. The item obtained does not belong to the community property and, as such, the owning spouse may dispose of it alone, without needing the consent of the donating spouse.

TITLE IV
USUFRUCT

CHAPTER I
GENERAL PROVISIONS

The content of usufruct

Article 232

Usufruct is the right of a person (usufructuary) to enjoy a thing that is owned by another with the obligation to preserve and maintain it.

Creation of usufruct

Article 233

Usufruct is created by law or by a legal transaction. It can also be created by adverse possession.

Duration of usufruct

Article 234

Usufruct can be with or without terms, but in any case it cannot exceed the life of the usufructuary.

When the right of usufruct is enjoyed by a legal person, it cannot last more than thirty years.

Modes of creating usufruct

Article 235

Usufruct that is created by legal act must be notarized, but when it is acquired by testament, there shall be acted according to the relevant provisions.

Usufruct over an immovable thing must be registered in the immovable property registry.

Joint usufruct

Article 236

Usufruct may be in favor of more than one person. When the right of one of them ends, the share will be added to the remaining usufructuaries in proportion with their shares. It shall be acted in this way until the right of the last remaining usufructuary has ended.

CHAPTER II
RIGHTS ARISING FROM USUFRUCT

Limits of enjoyment of the property in usufruct

Article 237

The usufructuary enjoys the property put in usufruct, but cannot change the economic destination it has had at the beginning of usufruct without consent of the owner or without the authorization of the district court, when the owner and usufructuary do not agree.

During the course of usufruct or at the end of it, the usufructuary may remove the additions made to the thing, in terms of the first paragraph of this article, which can be separated without damaging it, turning it in its initial state, unless it is otherwise provided in the act of creation.

Improvements of property in usufruct

Article 238

The usufructuary, at the end of usufruct, has no right to seek compensation for improvements made to the thing during use even if its value is increased, unless it is otherwise provided in the act of creation of the usufruct.

The addition of value can be compensated for damages that may have been caused to the thing through no fault of the usufructuary.

When there is no room for compensation, the usufructuary may remove the additions made without damaging the thing, unless the owner agrees to pay their value, as if they were separated from the thing.

Belonging of fruits

Article 239

The usufructuary is entitled to natural and civil fruits that are produced by the thing during the usufruct.

Natural fruits that are not separated from the thing at commence of the usufruct belong to the usufructuary and conversely, when they are not separated from the thing at the termination of the usufruct, belonging to the owner.

The transfer of the right of usufruct

Article 240

The Usufructuary can transfer this right to another for a time or all the time of its existence, unless it is otherwise provided in the act of its creation.

The transfer must be notified in writing to the owner, otherwise the previous usufructuary and a person who has acquired such rights are jointly responsible to the owner.

The right of alienation

Article 241

The usufructuary has the right to alienate things subject to usufruct to the extent that they are intended to be alienated in accordance with their nature.

In other cases, the usufructuary cannot alienate things subject to usufruct without consent of the owner, or without the authorization of the district court, unless it is otherwise provided in the act of its creation.

The authorization shall not be granted when the interests of the owner, the usufructuary or third parties are affected.

Replacement of the thing subject to usufruct

Article 242

When things subject to usufruct are alienated or replaced with other things, they belong to the owner and at the same time are subject to usufruct.

The above rule applies to everything that is collected from the debt-claim subject to usufruct, from compensation for reimbursement of damages or form depreciation of assets, when replacing or improving assets that are subject to usufruct.

All advantages, derived in the course of the usufruct other than its fruits, are also subject to usufruct.

Investments

Article 243

The owner and the usufructuary must agree that money subject to usufruct be productively invested, or be spent on the interest of other property subject to usufruct.

Lease

Article 244

The usufructuary has the right to lease things subject to usufruct, unless otherwise provided in the act of its creation.

When the usufruct expires, the owner must respect the lease normally started earlier, unless its extension has been done without his consent. When the usufructuary or tenant have requested consent of the owner for the lease and the later has not replied within the deadline, the consent is deemed granted.

When the usufruct expires, leases for a term of five years are valid only for five years from the day the lease has started.

Enjoyment of servitudes

Article 245

The usufructuary enjoys the rights of servitudes related to the property over which he/she has the usufruct and to other real rights to be enjoyed by the owner, except the limitations provided for in the act of creation or the law.

CHAPTER III
OBLIGATIONS ARISING FROM USUFRUCT

Replacement of damages

Article 246

The usufructuary is obligated to compensate the value of the thing lost or of the damages caused to it, unless proves that they are not caused because of his fault.

He is obliged to replace the things that, according to usufruct, had no right to consume.

Inventories

Article 247

The usufructuary receives the things in the condition they were before commencement of the usufruct.

Things subject to usufruct shall be taken over inventory made by notarial act in the presence of the owner, after having been notified at an appropriate time. It is the right of parties that all the details relating to the definition and condition of the things subject to usufruct be listed in the inventory.

The inventory can also be performed by private act, when both parties, who are present during its performance, come into agreement. The cost of the inventory are borne by the usufructuary, unless otherwise provided in the act of creation.

Periodic reports

Article 248

The usufructuary shall be obligated to send the owner at the end of each year a detailed written notice signed by him about the things that no longer exist or for the things that have replaced them, as well as for other benefits from the things subject to usufruct that do not fall under the category of fruits.

The cost of the annual notice are borne by the usufructuary, unless otherwise provided in the act of creation.

Providing a guarantee

Article 249

The usufructuary shall be obligated to give the owner a written guarantee for the fulfilment of obligations deriving from the usufruct, unless he/she is discharged by such obligation in the act of creation, or where the interests of the owner over the things subject to usufruct are adequately secured by an institution charged with this job.

Parents who have the legal usufruct over the things owned by their children are exempted from the provision of such a guarantee.

When the usufructuary is discharged from the obligation to provide a guarantee, the owner shall be entitled to ask the usufructuary to tell him every year the things given in usufruct, or get acquainted with the notification of a credit institution for the money or securities deposited.

The usufructuary cannot acquire possession of the things given in usufruct, without fulfilling the obligations arising from this article.

Consequences of the failure to provide a guarantee

Article 250

When the usufructuary does provide a guarantee, measures are being taken for the administration of the things subject to usufruct.

Immovable things shall be leased or entrusted to an administrator selected by agreement between the owner and administrator and when such an agreement is not reached, the administrator shall be appointed by the district court.

The usufructuary has the right to keep an apartment (a house) subject to usufruct as a residence for himself and his family.

The money involved in usufruct shall be invested with interest.

Movable things that wear out or get damaged because of use or foodstuffs likely to decay, shall be sold and their value is given with interest or is used for things subject to usufruct.

The usufructuary may require that sufficient movable things be left with him for personal use.

Maintenance costs

Article 251

The expenses necessary for the preservation, maintenance and administration of the thing are borne by the usufructuary. Expenses for non-common repairs, when they are the result of failure to fulfil his obligations to the thing subject to usufruct are also borne by him.

Extraordinary repairs are borne by the owner. If the owner refuses to conduct these repairs or other repairs that have been imposed on him, or unreasonably is delaying their commission, the usufructuary conducts them with his own expense, which shall be reimbursed until the end of the usufruct. The usufructuary has the right to keep the repaired thing till the repayment of expenses.

Securing usufruct

Article 252

The usufructuary must secure the things subject to usufruct in favor of the owner for the risks that usually they must be secured or that are required by law. In case of damage, the usufruct lies on remuneration paid.

When the usufructuary does not meet such an obligation, the owner has the right to secure the property and the usufructuary is obliged to pay the relevant costs.

Expropriation of things in usufruct

Article 253

When the thing is expropriated for reasons of public interest, the usufruct shall pass over on to the corresponding remuneration.

Payment of taxes and other obligations

Article 254

Taxes, fees, compensations, land rents and other annual obligations relating to revenues in the course of the usufruct are borne by the usufructuary.

Taxes, fees and other obligations relating to the property in the course of the usufruct, are borne by the owner.

CHAPTER IV
EXTINGUISHMENT OF USUFRUCT

Article 255

Usufruct is extinguished:

- By the death of the usufructuary or the dissolution of that legal person;
- By the expiration of the period set in the act of creation;
- By the merger of the qualities of the owner and the usufructuary in a single person;
- By the total destruction or loss of the thing subject to usufruct;
- By the failure to use the usufruct for twenty consecutive years.

Cessation of usufruct

Article 256

The usufruct may cease when the usufructuary abuses the rights or does not fulfil the obligations arising from the usufruct.

However, the court, under circumstances that will result, may order the usufructuary to provide a guarantee, in case he has been discharged from such obligation, or at the request of the owner to leave the administration of the thing subject to usufruct to the owner or to another person or order the renting of the property.

Renunciation of the usufruct

Article 257

The usufructuary may require, at his own expense, to renounce the usufruct because of the encumbrance and obligations arising from it.

Return of the things subject to usufruct

Article 258

After the usufruct has ended, the usufructuary or his heirs are compelled to place the things subject to usufruct at the disposal of the owner.

TITLE V
USE AND INHABITATION

Article 259

A person who is only entitled to use a thing, shall use it and enjoy its fruits to the extent he needs them for himself and for his family.

When the subject of the right of use is an apartment (house), the person has the right to live there according to his and his family needs. The thing or apartment that is used under this provision may not be alienated, encumbered or used by other persons.

Article 260

Provisions relating to the usufruct shall apply to the right of use and the right of inhabitation, to the extent consistent with these rights.

TITLE VI
SERVITUDES

CHAPTER I
GENERAL PROVISIONS

Article 261

A servitude is an encumbrance imposed upon a property for the use and benefit of a property belonging to a different owner.

Article 262

A servitude is established by law or by the will of man.

Article 263

The owner of the servient estate is not obliged to perform any action to enable the exercise of servitude, unless provided otherwise by the law or the title.

Article 264

The owner, in whose favor the servitude is established, shall be obliged to pay the owner of the servient estate the damage caused by establishment of the servitude.

CHAPTER II
COMPULSORY EASEMENTS

Article 265

The owner of an estate, who under the law, has the right to require the owner of another estate the establishment of an easement, in the absence of an agreement, may request the court.

Compulsory easements may be established by an act of the state body, in cases provided by law.

The decision must define the rules of the exercise of easement and compensation of the damage concerned.

Flowing waters

Article 266

The owner is obliged to receive in his estate the waters coming from rain, snow or unused resources, which flow naturally from the higher estates. The owner cannot change the natural flow at the expense of another.

Water flowing over a lower estate can be held by the owner of the higher estate only to the extent that is necessary for that estate.

Article 267

In cases where the banks and slopes of an estate serving to stop the waters are destroyed or damaged and because of the water it becomes necessary to build a barrier, but the owner of that estate refuses to build or to repair them, the owners of the estates that are damaged or are likely to get damaged, may build or repair them at their own expense.

These constructions and repairs must be carried out without causing the owner of the servient estate any damage, by respecting special rules, if there are any. When the owner of the servient estate has objections, the dispute shall be resolved by the court.

Article 268

The provisions of the preceding article shall also apply when it is necessary to remove a barrier materials formed in another estate or in a ditch, water flow or drainage, which affect neighboring estates.

Article 269

An owner who has a water source on his estate is free on its use, but without prejudice to the rights that may be acquired by the owner of the lower estate under a title or by prescription.

Article 270

If a watercourse prevents owners of contiguous estates from accessing these estates or continuous irrigation or drainage, those who use this watercourse shall be obliged, in proportion to profits earned from it (water), to construct and maintain bridges and other crossing means so conveniently and safe, as well as underground pipes or other works of this nature for continuous drainage and irrigation.

Article 271

The owner of an estate is obligated to accept without any compensation the drainage water coming from a higher estate when they flow naturally on his estate.

When this flow causes damages, he has the right to request compensation for the damage caused and measures to be taken to avoid it in the future.

Easements arising from construction works

Article 272

Rules for the construction of houses and other buildings, the distance between them, admission of light and view, construction of balconies and other construction works of this nature are governed by a special law considering the owner's rights provided in this Code and special laws.

Easements arising from the right to draw water

Article 273

The passage of waters through another's estate should be carried out in the most affordable and convenient way, with less damage, but without hindering the normal exercise of the servitude.

Article 274

When the passage of waters is required for a period of no longer than nine years, the payment of value and compensation of damages mentioned in the above provision is made at half of this value, with the obligation that at the expiry of the period, everything should be returned to the previous state.

This easement can become permanent if it is requested before the expiry of the period, through the payment of the other half, the value together with legal interest, from the date that the conversion started.

When the request is made after the expiry of the period, the payments made for the temporary establishment of this right shall not be taken into account.

Article 275

When the passage of waters should be carried out through public streets or rivers and other public buildings, the rules laid down in specific provisions shall apply.

Article 276

When in a house or its other facilities lacks the water necessary for the human life and livestock and when it cannot be provided otherwise, or large expenditures are required, the owner of the neighboring estate must allow that a quantity of surplus water be used in the extent necessary for the purposes above, and the other party shall pay the water value and costs required to be made for this purpose, and where appropriate, compensate the damage that can be caused.

Easement of the right of way

Article 277

The owner, without outlet to a public road, who cannot provide it except at great expense and with difficulty, is entitled to have the right of way through the neighboring estate for the appropriate use of his property.

The passage should constitute the shortest way to the public road and with less damage to the servient estate.

This provision shall apply even when the owner, who was given the right of way through the estate of another, requires a reasonable expansion of the pathway for vehicles, including the passage of mechanical means.

Article 278

The owner must permit the neighbor to enter and pass on his estate whenever there is a need to build or repair a wall or any other building. He should permit the person to search and receive the livestock and everything else belonging to him that happen to be there by chance or as a result of wind, water, avalanches and other major forces, which are located on his estate or merged together with his stuff.

The owner may not permit entry when he undertakes to deliver himself the item located on his estate. Where appropriate, the owner is compensated for the damage caused.

Article 279

The person who is entitled the right of way through the estate of another must pay the value of the occupied estate, without deducting taxes and other encumbrances related to the estate, and compensate for the damage caused, including the damage arising from the division of land, non- use of land, deposition of materials generated and the dumping of waste. The owner of the servient estate has the right to remove the latter and use the soil's surface, but without damaging the normal exercise of servitude.

Easement for the placement of pipes, cables and wires

Article 280

The owner must permit others to build on his estate channels or put pipes for water or gas, and telegraphic or electric cables and wires and other installations of this nature, but only when there are no other possibilities to make these works otherwise or without making large expenditures. The owner, when damage is caused, has the right to be compensated.

CHAPTER III
VOLUNTARY SERVITUDES

Article 281

The owner can establish any servitude on his estate or in the favor of his estate provided that it is not contrary to the legal order.

Voluntary servitudes are established by contract or by will.

Article 282

Easements are continuous when the use of which is done without the need for occasional acts of man, such as water lines, water falling from roofs and other acts of this nature.

Easements are discontinuous when the use of which requires the performance of current acts of man, such as the right to draw water, to graze livestock and other acts of this nature.

Easements can be apparent and non-apparent.

Non apparent are easements for which no apparent or permanent works are required, which are necessary for their exercise.

Article 283

Continuous and apparent easements are established by title or by prescription of ten years.

Continuous non apparent easements and discontinuous easements, apparent or non-apparent can be established only by title.

Article 284

When two properties cease to be in possession of one person, the servitude shall exist actively or passively in favor or against each separated property, unless there is a contrary agreement.

CHAPTER IV
MODES OF EXERCISING SERVITUDES

Article 285

The right of servitude extends to all that is necessary for its exercise.

Article 286

The owner, without the consent of the usufructuary cannot charge the property with servitudes that infringe the rights of the usufructuary.

Article 287

Servitude on a property that belongs to several people in joint ownership

can be established only with the consent of all co-owners. The servitude established by only one or several co-owners takes effect when the other co-owners together or separately have consented to its establishment.

Article 288

A person who has a right of servitude must use it according to his title or possession thereof. When there are doubts about the scope and manner of the exercise of servitudes, it is considered that the servitude is established in such a way as to meet the needs of the dominant estate, causing the least burden on the servient estate.

Article 289

The right of servitude shall be exercised at the time and in a manner that brings less difficulties and concerns for the owner of the servient estate.

Article 290

When the property for the benefit of which a servitude is established shall be divided, the servitude will serve each portion, provided that the burden of the servient estate is not increased.

Article 291

The owner, with his actions or omissions should not reduce the use of servitude or make it more difficult.

Despite this, if the conditions have changed and the owner of the servient estate is burdened or impeded in the exercise of property rights, he may ask the owner in the benefit of whom the easement has been to change the venue of the servitude.

The owner of the other estate has the same right when proved that this change will bring benefits and does not damage the servient estate.

Protection of servitude

Article 292

A person who exercises a servitude has the right to demand judicially by anyone who opposes this right, demanding as appropriate the full restoration of this right, the termination of infringement, as well as compensation for damages caused.

CHAPTER V
EXTINGUISHMENT OF EASEMENTS

Article 293

Easements are extinguished:

a) When the ownership of the dominant and servient estates merge in the same person;

b) When it is not used for more than ten years.
The limitation period for discontinuous easements starts from the day on which the servitude ceased to be used, while for continuous easements it starts from the day on which an act took place or a fact that prevents the exercise of easement was verified. To the effect of extinguishment of easement, the time that it has been exercised by the previous holder is also computed;

c) When the things are damaged or deteriorated to a degree that they cannot be used for their purpose.

The return of these things to a state that they can be used again brings consequently the revival of easements, unless this right is prescribed.

Article 294

When the dominant estate is under joint ownership, the use of the easement from one of the co- owners, prevents prescription with respect to the other co-owners.

Article 295

Suspension or interruption of prescription in favor of one of the co-owners, has also effects in favor of the others.

TITLE VII
PROTECTION OF ASSETS

Legal claim to demand the asset

Article 296

The owner has the right to file a lawsuit to demand his property from

any possessor or holder. This applies also to any co-owner for the joint property, so that it be delivered to all co-owners.

The Joint Colleges of the Supreme Court in unifying decision no. 5, dated 31.05.2011, regarding the meaning of a lawsuit for the recovery of an item, have reasoned as follows:

> 16.1. Essentially, a lawsuit for revendication is a lawsuit of a non-possessing owner against a non-owner possessor. This lawsuit aims to: a) recognize the plaintiff's right of ownership over the reclaimed item, and b) obligate the defendant to return the reclaimed item to the plaintiff.
>
> 16.2. The recognition of the plaintiff's ownership is an essential condition for the acceptance of the plaintiff's claim. The declaratory character of this lawsuit stems from its very nature. This character corresponds to the declaratory (positive) lawsuit, which, according to Article 113/b of the Civil Code, is not subject to prescription.
>
> 16.3. A lawsuit for revendication is a real action, and it protects the right of ownership over individually defined items, whether immovable or movable.

Right of the possessor in respect to revenues

Article 297

The separated natural fruits and obtained civil fruits that have become acquirable belong to the possessor in good faith until the day he was informed that he is an illegal possessor, or was notified of the lawsuit of the owner for the return of the asset. He is not obliged to compensate the owner for the loss, damage or impossibility of returning the asset for any other reason, but after this day, he is responsible for the fruits obtained or that he should have obtained, acting with care until the time of returning the asset, for the compensation for the use of the asset, as well as for the loss, damage or impossibility of returning because of his fault.

Article 298

The possessor in bad faith, for the entire time of his possession, is obliged towards the owner to return the asset together with the separated natural fruits and obtained civil fruits or those that have become acquirable, and other revenues he should have obtained, and compensate the owner for

the use of the asset and for the loss, damage or impossibility of returning the asset even without his fault.

He is discharged of the liability when he proves that the damage would have been caused even if the asset had been returned at the right time, unless it was obtained unlawfully.

Right of the possessor in respect to expenses

Article 299

The possessor in good faith has the right to demand the payment of necessary and useful costs made in regard to the asset to the extent that these have increased its value, if it continues to exist at the time of returning the asset.

The possessor in good faith is entitled to deduct from the proceeds of the asset, the expenses recognized under this provision. He has the right to hold the asset, until the necessary and useful expenses are paid back to him.

Article 300

The possessor in bad faith is entitled to demand only the payment of necessary expenses made in regard to the asset.

Article 301

The possessor in good faith and the possessor in bad faith, except the expenses recognized under the articles of this Code, are not entitled to demand payment of other expenses made in regard to the asset, but they have the right to remove from the asset what they have added and what can be separated without damaging the asset, unless the owner agrees to repay their value.

Negating lawsuit

Article 302

The owner has the right to demand from anyone who disturbs him in his possession, but without being deprived of his possession, to cease the disturbance and not to repeat it in the future, and where appropriate, to compensate damages he might have caused to the owner.

Claims against new constructions and potential damages

Article 303

The owner, the person who enjoys another real right or the possessor, who have reason to worry that because of new constructions begun by others on their own land or on another's land may cause damage to the asset in his ownership or possession, might address the court provided that this construction is not completed or not a full year have passed since its inception.

The court, as the case may be, decides to ban the construction, demolish or reduce it and, where appropriate, order compensation for the damage, or refute the claim ordering compensation of the damage when it turns out that the construction was unjustly banned.

TITLE VIII
POSSESSION

CHAPTER I
GENERAL PROVISIONS

Meaning of possession

Article 304

Possession is the effective domination of a person over an asset and other real rights over it. Possession may be exercised directly or by a person holding the thing.

Kinds of Possession

Article 305

Possession by a person who is not the owner can be legal or illegal.

Possession is legal when the holder has got possession from the owner on the basis of a legal transaction, under the law, or an administrative act.

In all other cases, possession is illegal.

Article 306

Illegal possession can be in good faith or in bad faith.

Possession is in good faith when the owner is not aware or is not obliged to be aware of his possession being illegal.

Good faith is presumed and it is sufficient to have been at the time of acquisition of possession.

Presumption of possession

Article 307

The current possessor, having had possession at an earlier time, is presumed to have held possession also during intermediate time.

Article 308

The current possession does not presume the previous possession, unless the possessor has a title that is the basis of his possession.

In this case, the possessor is presumed to have been possessed by the date of the title.

Acquisition of possession

Article 309

Possession is acquired by legal transactions, by inheritance and by occupation.

A person who has acquired possession in good faith can add in his possession the time of possession in good faith of the person from whom he has obtained the asset.

CHAPTER II
PROTECTION OF POSSESSION AND KEEPERSHIP

Immediate protection

Article 310

The possessor has the right to object immediately, using appropriate protection, any action that is intended to affect or deprive him of

possession. When the asset is taken forcibly or secretly, the possessor has the right to take it back straightway or while giving chase, but avoiding acts of violence that are not compatible with the circumstances of the event.

Article 311

The holder of the asset is also entitled to the right to protect the possession against any person other than the one from whom these rights come.

Cessation of disturbance in possession

Article 312

The person who is disturbed in his possession of an asset, may request within six months the cessation of disturbance in possession and no repetition of it in the future.

When the possession is gained by force or secretly, the claim can be filed within six months from the day the violence or secrecy have ceased.

The cessation of disturbance in possession cannot be claimed by the person who has acquired the possession by force or secretly.

Restoration of possession

Article 313

The possessor, who illegally is deprived of possession, has the right to demand, within six months, restoration of his possession.

The possessor who has acquired possession by force or secretly is not entitled to this right.

When the deprivation has taken place secretly, the deadline for demanding restoration of possession begins from the date the deprivation is identified.

Article 314

Restoration can be claimed against a person who has acquired possession through a title, but had been aware of the deprivation occurred.

Article 315

During the consideration of the claim for cessation of disturbance or restoration of possession, the defendant cannot claim that he is the owner or that he has a better title than the possessor.

PART III

TITLE I

GENERAL PROVISIONS

Meaning of inheritance

Article 316

Inheritance is a transfer by law or by will of property (inheritance) of a deceased person to one or more persons (heirs) according to the rules set out in this Code.

Article 317

Inheritance by operation of law applies when the decedent has not left a will, or has made a will only for a portion of his property, or when such will is fully or partially invalid.

Article 318
Time of opening of an inheritance
(Amended by Law no. 121/2013, dated 18.4.2013)

An inheritance is opened when the testator dies.

In case of declaration of the death, the inheritance is opened on the day when, according to the court decision, the person is considered dead.

Article 318/1
Place of opening of an inheritance
(Added by Law no. 121/2013, dated 18.4.2013)

An inheritance shall be opened in the last place of residence of the decedent. When the decedent's last place of residence is unknown, the inheritance shall be opened in the place where all his property or the major part thereof is located.

Article 318/2
Applicable law
(Added by Law no. 121/2013, dated 18.4.2013)

An inheritance shall be regulated in conformity with the law of the time when it is opened.

The Joint Colleges of the Supreme Court in unification decision no. 24, dated 13.03.2002, have determined the following:

> Inheritance opens at the moment of the death of the decedent, physically confirmed or determined by the judicial decision of the declaration of death. The determination of this moment is of particular practical importance because, based on it, the circle of heirs entitled to inherit is established, along with their rights and the moment of the transfer of the right of inheritance. It is this moment that also determines the applicable law regarding the effects that follow the opening of the inheritance.

Article 319

Any agreement by means of which are acquired or used the rights arising from a succession that has not yet been opened is invalid.

Capacity to inherit

Article 320

A person has capacity to inherit when at the time of opening of the inheritance he is alive, or has been conceived before the death of the decedent and born alive.

A person who is born within 300 days after the death of the testator shall be presumed to have been conceived at the time of opening of the inheritance.

Article 321

When two or more persons are called to inherit from each other and it cannot be proved whom of them died first, they are deemed to have died at the same time and no rights can be transferred from one to another.

Unworthiness

Article 322

Unworthy to inherit is:

- A person who has intentionally killed or attempted to kill the decedent, his/her spouse, children and parents;
- A person who has made a false accusation or testimony against the decedent for committing a criminal offense punishable by death or

imprisonment over 10 years, when the accusation or testimony are declared false in a criminal trial;

- A person who by fraud, intimidation and violence has forced the decedent to make, amend or revoke a will, or has drafted himself a false will, or has used it to his interests or to the interest of others;
- A person who has behaved in a humiliating manner towards the decedent and has mistreated him.

Article 323

Unworthiness of a parent or ascendants does not exclude children or their descendants, when they inherit themselves or when they come to inheritance by substitution. In such a case, the unworthy parent cannot enjoy the rights of usufruct and administration in the inherited share that comes to his children, which the law recognizes parents on their children's assets.

Pardon of unworthiness

Article 324

A testator has the right to pardon an unworthy person to inherit, provided that the pardon is granted expressly by notarial act or by will, or when the pardon, although it is not granted expressly, the testator has noted in the will that he/she has recognized the unworthiness and yet designates him as heir.

Obligations of an unworthy heir

Article 325

A person excluded from inheritance as unworthy must return the fruits and any other income received from property inheritance after the opening of the inheritance.

Substitution

Article 326

Substitution allows the substituents to be put in the place, degree and the rights of the person they substitute.

Article 327

Substitution in the straight line descendants is without limits and in all cases, be it when the child of the decedent competes with the descendants of another child died earlier, or when the children of the decedent have died before him and their descendants be or not on the same degree, or by their number according to birth.

Article 328

To straight-line ascendants there is no substitution; the closest exclude others.

Article 329

In indirect line, the substitution is accepted in favor of children and descendants, brothers and sisters of the decedent, even if they compete with their uncles or aunts or their descendants to the same degree or not.

Acquiring inheritance

Article 330

Inheritance is acquired after the death of the testator.

Article 331

With the opening of inheritance, the decedent's possession of the estate passes to the heir, without the need to lay hands on it.

Article 332

The heir can acquire all the decedent's property or a part thereof, or only a specific thing or another property right.

Article 333
Renunciation of inheritance
(Amended by Law no. 121/2013, dated 18.4.2013)

Renunciation of inheritance shall be done with a written statement, which is registered to the notary of the local government unit where the inheritance is opened, or by a notarized declaration edited by a notary.

The renunciation may also be done by a representative with special power of attorney.

After recording the renunciation of inheritance, the notary ex officio issues a new certificate of inheritance, which reflects the change in the circle of heirs, as well as the parts belonging to them, which he sends to the person who has requested the issuance of the initial certificate of inheritance.

Article 334

A person who has renounced the inheritance, is deemed as never to have been called to inherit. Renunciation of inheritance does not exclude the heir from the right to seek legacies.

Article 335

Renunciation of inheritance can be made within 3 months from the opening of the inheritance and, when the heir is abroad, no later than 6 months.

For the heir who was not born at the time of opening of the inheritance, the period for renunciation of inheritance begins from the date of birth.

The period for renunciation of inheritance is suspended for reasons that are valid for the prescription of the claim.

Article 336

(Amended by Law no. 121/2013, dated 18.4.2013)

When it is not known whether there are heirs, or when the heirs are missing and there is no news about them, the notary of the local government unit where the inheritance is opened, ex officio or at the request of any interested person shall set a time, not less than six months from the opening of the inheritance, within which they must declare whether they are renouncing the inheritance. If within this period no such a statement is made, it is presumed that the decedent has left no heirs.

Article 337

The renunciation of inheritance, made before the opening of the inheritance, or when done on condition, with a deadline, or for a part of the inheritance, or in favor of one of the other heirs, is invalid.

Article 338

Renunciation of inheritance cannot take place when during the three-month period the heir by his actions has behaved as heir.

Actions performed only to preserve the inheritance, are not considered behavior as heir.

Heirs who have removed or hidden things from the inheritance, lose the right to renunciation and remain heirs even if they have declared renunciation of inheritance.

Article 339

The heir who has correctly declared the wish to renounce inheritance or not, cannot annul the declaration later.

Article 340

When the heir dies before the period for renunciation of inheritance expires, the right to renounce is transferred to his heirs.

Payment of debts

Article 341

Heirs are liable for debts encumbering the inheritance in proportion to their shares, up to the value of the property they have inherited.

The decedent's debts, burial costs and expenses necessary for the preservation and administration of the inheritance are counted as debts encumbering the inheritance, until it is transferred to the respective heirs.

Article 342

When in an inheritance, one or several immovable assets are encumbered with a mortgage, each heir is entitled to require that these assets be exempted from mortgage before the formation of inheritance parts.

However, the heir who has paid the debt arising from a mortgage encumbered on an immovable asset in his inheritance part, is entitled to return it to the other heirs, in proportion to their shares.

Article 343
Measures securing inheritance
(Amended by Law no. 121/2013, dated 18.4.2013)

When deemed necessary to protect the interests of the heirs, of persons who can benefit from dispositions by will, of creditors of the decedent or the state, the notary of the local government unit, where the inheritance

is opened, ex officio, or at the request of any interested person, makes an inventory of the inheritance.

The notary who makes the inventory may appoint a person as a trustee of the inheritance.

As long as the measures above remain, the heir who could have commenced with the administration of the inheritance, cannot alienate it without prior permission of the court.

Article 344

(Amended by Law no. 121/2013, dated 18.4.2013)

When it is not known whether there are heirs, or when the heirs are missing and there is no news about them, or when the legal or testamentary heirs have renounced the inheritance and their heirs are not known, the notary of the local government unit, where the inheritance is opened, ex officio, or at the request of any interested person, shall appoint a custodian of the inheritance.

A summary of the notarial act of appointment of the guardian is published in the Official Journal.

Article 345

The custodian shall require that an inventory of the inheritance be carried out, takes measures to administer the property, exercises the right to sue and answers charges in connection with this property, deposits in bank the inheritance money or the money derived from it, performs other actions of this nature and shall be accountable at the end of administration.

Article 346

With the approval of the court, the custodian shall pay the obligations encumbering the property, perform liabilities related to legacies and burdens and, where necessary, alienate even inheritance property.

Article 347

A custodian's duty shall cease with the appearance of an heir.

Article 348
Certificate of inheritance
(Amended by Law no. 121/2013, dated 18.4.2013)

Quality as heir and inheritance shares are determined in a certificate of inheritance issued by a notary, after the presentation of the decedent's death certificate, according to the rules set out in this Code and the law on notary.

The certificate of legal inheritance shall be issued by the notary of the local government unit where the decedent resided last. When the decedent's last place of residence is not known, the certificate of legal inheritance shall be issued by the notary who operates at the local unit where all his property or most of it is located.

The certificate of testamentary inheritance shall be issued by the notary, with whom the testament was edited by a notarial act, or the holographic will or the special testament were deposited for safekeeping. If the same testator has left more than one testament, the certificate of testamentary inheritance shall be issued by the notary, with whom the last testament was edited or deposited for safekeeping. The certificate of testamentary inheritance, in cases where the holographic will or the special testament are not sent to the notary for safekeeping, shall be issued by the notary who operates at the local unit where the decedent resided last. When the decedent's last place of residence is not known, the certificate of testamentary inheritance, in cases where the holographic will and the special testament are not sent to the notary for safekeeping, shall be issued by the notary who operates at the local unit where all his property or the main part of it is located.

The certificate of inheritance shall be edited in a number equal to the number of heirs defined in it. The notary, at the time of editing, shall issue the certificate of inheritance in a number equal to the number of applicants, while the other edited copies shall be stored by the notary and may be taken from the other heirs, upon their request.

More detailed rules for the issuance of a certificate of inheritance and registration of wills are defined in the law on notary.

Lawsuit to demand an inheritance
Article 349

An heir may demand in a lawsuit from anyone who possesses wholly or partly the inheritance property, his recognition as an heir and the delivery of inheritance property and the assets acquired by it, under the rules of possession in good faith and bad faith.

Article 350

The lawsuit to demand the inheritance may be brought against the person who holds the inheritance property according to a certificate of inheritance, even when it is the state. A person, who has acquired a thing of the inheritance property in good faith by such an heir, shall not be obliged to return the thing, even if it was acquired against payment.

The possessor in good faith who has also in good faith alienated things from the inheritance, shall only be obliged to refund the price of the things to the plaintiff accompanied by the relevant invoice. When the latter has not been paid, he is entitled to demand their payment.

Article 351

The lawsuit to demand the inheritance shall not prescribe, except the effects of adverse possession on separate things.

Article 352

Provisions relating to possession shall also apply to possession of inherited things in terms of demanding the fruits, or expenses incurred for improvements and additions made.

Division of inheritance

Article 353

Each of the co-heirs have the right to request the division of inheritance at any time, even if the testator has ordered otherwise.

The Joint Colleges of the Supreme Court, in unifying decision no. 6, dated 24.01.2007, addressed several aspects of the partition of inherited property in the context of the property restitution and compensation process, reasoning as follows:

> Pursuant to Article 353 of the Civil Code, any heir has the right to request the partition of the inherited property at any time, even if the de cedent has ordered otherwise. It is not the duty of the Property Restitution and Compensation Commission to partition the property of former owners and return it separately to each heir.
>
> [...]

The Joint Colleges of the Supreme Court conclude that with the second decision of the Property Restitution and Compensation Commission, which compensated one of the heirs (the defendant), the state fulfilled its legal obligation toward all creditors (heirs), as compensation cannot be granted solely to one heir when the property and respective shares have not been divided by the court.

Since, in this case, compensation was granted to one of the heirs, specifically the defendant [...], the other heirs, including the plaintiff [...], may claim their share of the inherited property through legal action.

[...]

The land subject to dispute, with an area of [...], granted as compensation, belongs to all legal heirs of the former owner and not solely to one of them.

The position taken by the first-instance and appellate courts contradicts not only the above conclusions of the Joint Colleges but also the very legal basis of the claim raised by the plaintiff. Both the court of fact and the appellate court based their conclusions on the reasoning that the property used for in-kind compensation to the defendant [...] was not derived from inheritance but rather from a legal obligation of the state to compensate former owners or their heirs.

However, the legal relationship established between the litigating parties is one of inheritance, not an obligation, as assumed by the courts in their reasoning. The obligation relationship exists between the state (debtor) and the former owners or their heirs (creditors).

Article 354

(Amended by Law no. 121/2013, dated 18.4.2013)

Division of the inheritance property is done by agreement among the heirs, which is approved by notarial act.

If the heirs do not agree on the division of inheritance, the notary, on the basis of the principle of impartiality and taking into account the rules of the division of property under this Code, shall provide the heirs with legal options for the division of the inheritance to achieve an agreement among themselves. In this case, the notary shall explain them their rights

and duties, and shall warn them of the consequences that come from the signing of the agreement, so that their interests are not harmed because of their ignorance of the law.

When the heirs do not agree even with the solutions offered by the notary, the division of the inheritance is made by a court competent to deal with claims arising from inheritance.

Article 355

Division of the inheritance is done according to the rules provided for in Article 207 of this Code and other provisions of this chapter.

Article 356

In the creation of respective shares there should, as far as possible, be in each of them parts from the same quantity of movable or immovable property, rights in rem or credits, which have the same nature and value.

Article 357

When creditors have sequestered the movable assets of the inheritance, or have opposed the division of inheritance under **Article** 206 of this Code, or the majority of the co-heirs consider it necessary to pay the debts encumbering the inheritance, the movable assets shall be sold at auction.

Article 358

The spouse of the decedent has the right to demand the portion belonging to him/her from the joint property obtained by work by the spouses during the marriage.

The co-heirs, who by their work or incomes have helped to increase the inheritance, have the right to demand their share of the increased property, according to the contribution made.

Article 359

The portion of a deceased member of the farm family's property shall be transferred to his heirs, regardless of their membership or not in the agricultural economy.

When the last member of the agricultural economy dies, the property shall be transferred to his/her heirs according to the rules set out in this Code.

TITLE II
SUCCESSION BY OPERATION OF LAW

Article 360

Legal heirs are the children, grandchildren, spouse, parents, siblings and children of the siblings who have died earlier, grandparents and other ascendants, disabled persons dependent on the decedent, other relatives up the sixth degree, and the state. They are called to inherit in the order specified in this Code.

Article 361

(Third paragraph amended by Law no. 8781, dated 3.5.2001)

In the first row shall be called to inherit the children and the spouse able or unable to work, each inheriting in equal parts.

When one of the children had died before the decedent, has become unworthy to inherit, has renounced the inheritance, or has been exempted from inheritance, his children shall be called in his place to inherit by substitution and when because of the reasons above they cannot be heirs, their descendants shall be called to inherit without limitation. In this case, the portion of the parent who does not inherit shall be divided into equal parts among his descendants.

When besides the spouse, there are no other heirs of the first degree, the heirs of the following degree shall be called to inherit as provided for in Article 363 of this Code and when there are no such heirs, the heirs of the next degree shall be called to inherit as provided for in Article 364 of this Code.

In any case, the spouse receives half of the inheritance.

When there are no heirs of the degrees above, the inheritance passes to the surviving spouse.

Article 362

(First paragraph amended by Law no. 8781, dated 3.5.2001)

Children born out of wedlock, when the fatherhood or motherhood is duly recognized and children adopted are equivalent to children born in wedlock.

A child adopted does not inherit from his family of origin and neither does the family of origin inherit from him.

Article 363

In the second row shall be called to inherit the decedent's parents and disabled persons, who at least 1 year prior to the decedent's death, have lived together with him as family members and as his dependents.

Article 364

In the third row shall be called to inherit the disabled persons dependent on the decedent referred to in Article 363 of this Code, when there are no other heirs of the second degree, grandparents, siblings, and children of the siblings who had died earlier. The heirs above inherit in equal parts, without making distinction between the brothers and sisters of a father or only of a mother, or between grandparents from the father's or mother's side.

Article 365

When the testator has left no descendants, no parents or other ascendants, no brothers or sisters or descendants of the latter, the property of the testator passes to the relatives nearest to him, without making a distinction between paternal or maternal line, however no further than the sixth degree.

Article 366

When the testator has left no heirs to the extent of the sixth degree, the State shall be called to inherit.

Article 367

The State shall not be liable for the obligations of the testator beyond the value of the property acquired.

The right to add household items

Article 368

Heirs who lived together with the testator at the time of his death, when called to inherit, in addition to the portion of the inheritance that belongs to them, they get the household items of common use, unless the testator has provided otherwise in the testament.

Inheritance according to the degree of inheritance

Article 369

Heirs of a lower degree shall be called to inherit only when there are no heirs of a higher degree, or when they all have become unworthy or have renounced the inheritance or is exempted from inheritance, unless when from heirs of the second degree shall remain the heirs unable to work and heirs of the third degree.

Right to additions

Article 370

When one of the co-heirs called to inherit has died before the testator, or has become unworthy, or has renounced the inheritance, or is exempted from inheritance and there are no persons to inherit by substitution, the share belonging to him shall be added to the shares of co-heirs of that degree.

Heirs unable to work

Article 371

Heirs unable to work are those who at the time of the decedent's death have not attained the age of 16, or the age of 18 if they continue studies, the men who have reached the age of 60 and women who have reached the age of 55 and, regardless of age, those who are invalids of the first group and second group.

TITLE III
TESTAMENTARY SUCCESSION

Meaning of testament

Article 372

Testament is a legal unilateral transaction carried out by the testator, by which he disposes of his property for the time after his death.

The testament cannot be done by two or more persons in the same document, nor to the benefit of a third party, or by reciprocal dispositions.

The Joint Colleges of the Supreme Court, in unification decision no. 1, dated 24.03.2005, addressed the following issues for unification:

1. Can the status of a testamentary heir extend to assets (or rights) that were not part of the decedent's estate at the time the will was drafted but existed in the estate's assets at the time of the opening of the inheritance?
2. In testamentary succession, when the testator has designated specific assets (or rights), should the existence and value of these assets be determined at the time the will was drafted or at the time of the testator's death?

The Joint Colleges of the Supreme Court reasoned as follows:

> Only universal heirs or heirs with a universal title have the legal capacity to inherit assets that were not expressly foreseen in the will by the decedent. Only they acquire rights (assets) that were obtained after the drafting of the will and that exist in the estate at the time of the opening of the inheritance. At the same time, they are also obliged to fulfill, intra vires hereditatis - within the limits of the inherited estate - the obligations that burden the estate.
>
> This leads to the logical conclusion that only in cases of universal succession or succession with a universal title are included legal relationships whose existence was not known by the testator.
>
> Conversely, a special-title heir (legatee) has a limited right, which is confined to the specific assets or rights explicitly designated in the will - *ut singuli* - and, as a result, changes in the inherited estate observed at the time of the opening of the inheritance will not be reflected in their title.
>
> [...]
>
> A testamentary heir will be subject to all changes that the decedent's estate has undergone from the date the will was drafted until the opening of the inheritance, as a will is a *mortis* causa juridical act - taking effect upon death - and, unlike *inter vivos* juridical acts (between living persons), it produces effects only from the moment of the testator's death.
>
> To assess the existence of a title over a specific asset disposed of by the testator in the will, the relevant date will be the date of the decedent's death, i.e., the opening of the inheritance, rather than the date of the will's drafting.

Just as the determination of the beneficiary of the will, the existence of the assets disposed of in the will, and their value must also be evaluated *at the moment of the opening of the inheritance* rather than at the date of the will's drafting.

It is understood that the call to testamentary succession will be effective only if the assets designated by the testator are present in the estate at the time of the opening of the inheritance. The material nonexistence of these assets - due to amortization or destruction - or their legal nonexistence - due to alienation - would render the testamentary dispositions concerning these assets or rights invalid.

Capacity to dispose by testament

Article 373

Any person who has reached the age of 18, and a woman under this age when she is married may make a testament.

A minor from 14 to 18 years of age can make a testament only to the property acquired through his work.

The person, who by a court decision is deprived of the ability to act, and the one who at the time of making the testament is not able to understand the significance of his action, cannot make a testament (will).

Capacity for succession under testament

Article 374

Persons who are incapacitated by law to succeed are incapable for succession under testament except the non-direct children of a certain and alive person at the time of death of the testator, even if those children were not yet conceived.

Article 375

In no case can the custodian benefit from the testamentary dispositions of the person in custody when they are made before the approval of the final account, even if the testator had died after the approval of the account.

Dispositions made in favor of the custodian are valid, when the custodian is an ascendant, descendant, brother, sister or spouse of the testator.

Article 376

Testamentary disposition in favor of incapable persons referred to in Articles 374 and 375 of this Code shall be void even if it is hidden under the form of a contract award or be made under the name of an interposed person.

Shall be interposed persons: father, mother, descendants and spouse of the incapable person.

Institution of heir

Article 377

(Declared not compatible with the Constitution because of the legal gap, by decision no. 69, dated 27.12.2023 of the Constitutional Court)

The decedent who leaves no descendants or ascendants, or no siblings, has the right to dispose of his property by testament in favor of any natural or legal person.

The Constitutional Court of the Republic of Albania in its decision No. 69, dated 27.12.2023, has ruled as follows:

1. *To accept the request.*
2. *Article 377 of the Civil Code is found to be incompatible with the Constitution due to a legislative gap, as reasoned in this decision.*
3. *The Albanian Parliament is required to fill the legislative gap within one year from the date this decision enters into force.*
   This decision is final and enters into force on the date of its publication in the Official Gazette.

In its decision the Constitutional Court, among other things has reasoned that:

> [...] The Court finds that the provision of Article 377 of the Civil Code constitutes a restriction on the right of the testator to freely dispose of their property upon death, not only in favor of persons outside the circle of legal heirs but also within this group. Furthermore, the right to inheritance, which is explicitly mentioned in Article 41 of the Constitution as a means of acquiring ownership, complements and is intertwined with ownership itself, forming the foundation of the private property system. As a result, the Court considers that the constitutional guarantees of Article 41 of the Constitution also apply to the right to dispose of property by

will, as part of the right of inheritance. Therefore, the Court will assess whether the restriction on the right to dispose of property by will meets the criteria set out in Article 17 of the Constitution.

i. Compliance with the requirement of legal restriction

42. The first criterion to be analyzed is that rights and freedoms may be limited "only by law," which is accepted as fulfilled by the referring courts and interested parties. The Court also finds that since the restriction is provided by the content of Article 377 of the Civil Code, in accordance with Article 17 of the Constitution, this criterion is respected both formally and substantively.

ii. The existence of public interest

[...] The Court finds that the restrictions on the right to property regarding the freedom to dispose of it by will, as set forth in Article 377 of the Civil Code, aim to protect the rights of a specific group of legal heirs within family relationships, given the special protection granted to the family by Article 53 of the Constitution. The stability of the family forms the basic unit of the social organization of the country. In this case, the interests of a wider family circle with blood ties are weighed against those of a smaller group characterized by a closer emotional connection with the testator. Special protection is also afforded to children under Article 54 of the Constitution, which imposes a duty of support on parents not only until they reach adulthood but also until the age of 25 if they continue their studies (Article 197 of the Family Code). Therefore, the Court finds that by determining the manner of disposing of property after death, this provision aims to protect the immediate family circle and ensure legal order and stability in social relations.

51. Under this analysis, the Court concludes that the intervention in the manner of disposing of private property by the testator serves the public interest, thereby fulfilling the second criterion set forth in Article 17 of the Constitution.

iii. Proportionality criterion

[...]

64. In this context, the Court notes that since, de jure, inheritance entails the legal transfer of ownership of an estate and, although the legislator may reasonably restrict its disposition to a group of heirs with a blood relationship, a fair regulation in line with

present-day conditions cannot exclude individuals who de facto are family members. Therefore, the legislator must protect the traditional essence of the inheritance institution while adapting the law to social conditions - a fundamental principle of the rule of law - and maintaining a reasonable balance between legal heirs and testamentary heirs. The Court emphasizes that the mere obsolescence of a legal norm does not, in itself, make it unconstitutional unless it no longer aligns with social, cultural, economic, and moral developments to the extent that it fails to respect the essence of human rights and freedoms.

65. Based on the above, the Court finds that while the legislator has included the surviving spouse in Article 361 of the Civil Code as a first-degree legal heir - demonstrating the special position foreseen for this family member - it has not included them in the circle of testamentary heirs. The Court notes that the surviving spouse holds a special place in family relationships, not only due to their close familial ties with the deceased but also because of their contribution to accumulating and safeguarding the family's wealth. The absence of their inclusion in the category of testamentary heirs creates the possibility that they may become a burden on society. For this reason, the surviving spouse was recognized as a testamentary heir in the 1929 Civil Code, and the current Family Code also includes specific provisions concerning the spouse (Article 54 – contributions of spouses; Article 57 – spouse's consent; Article 63 – disposal of income; Article 67 – inalienable rights; Article 76 – presumption of joint property; Articles 81, 84–86 – obligations regarding shared property, etc.). Therefore, the Court finds that the surviving spouse should be placed in the category of testamentary heirs, equal to children. Consequently, the inability to provide for the spouse through a will contradicts the legislator's aim of ensuring and safeguarding family interests. The need to include the surviving spouse as a testamentary heir constitutes a necessary measure to provide more effective protection and strengthen family stability after the testator's death.

66. In the same vein, the Court, in relation to European legislative practices, notes that the protection of the right to dispose of property by will can be achieved through the establishment of a reserved portion of the estate, which the testator may freely allocate according to their wishes.

This means that the intended restriction on testamentary freedom can be achieved through other, less restrictive means, which would not make it an absolute limitation. In this perspective, defining a portion of the estate that the testator may freely dispose of is considered an acceptable and balanced approach regarding the interests of other family members involved in testamentary inheritance.

67. Based on the above, the Court concludes that the challenged provision, by failing to include the surviving spouse as a testamentary heir, restricts the scope of testamentary heirs and does not allow the testator to freely dispose of any part of their estate. The Court considers that the absence of such provisions is unfair and based on illogical considerations. Even though the restriction serves a public interest, it is not proportionate under the criteria set forth in Article 17 of the Constitution. Consequently, the provision contains a legislative gap that has negative consequences for the testator's rights, disproportionately infringing on their right to dispose of property mortis causa. Therefore, the Court finds that the referring courts' claim of a violation of the right to property, in connection with the principle of legal certainty, is well-founded.

Exemption from succession

Article 378

A testator even without instituting any heirs in the testament, may exclude from legal succession one or more of his heirs.

Legal reservation

Article 379

A testator cannot exclude his children from legal succession, who are minors or other minor heirs inheriting by substitution (Article 361, second paragraph), as well as his other heirs unable to work if called to inherit, nor can he undermine by testament in any way whatsoever, the share belonging to these heirs on the basis of legal succession, unless they have become unworthy to inherit.

Article 380

When a testator disposes a usufruct or a life tenancy by testament, the proceeds of which exceed those of the disposable part, the heirs entitled

to legal reservation may execute this disposition or renounce the right to disposable part.

Persons who benefit from the legal reservation have the same right of choice, if the testator has disposed of the bare ownership of a portion that exceeds the disposable share.

Substitution

Article 381

The testator may designate in the testament, if the heir should die before him or should become unworthy, or should renounce the inheritance, one of the other heirs as indicated in articles 361, 363 and 364 of this Code to receive the inheritance and, when there is none of these, another person to receive it.

But the testator cannot compel the heir to safeguard and, after his death, to deliver all or a part of the inheritance received to another person.

Right to additions

Article 382

If the testator has left all his property to the heirs designated in the testament and one of those heirs should die before him, or should become unworthy, or should renounce the inheritance and the testator has not designated another substitute heir for these cases, and when an heir is exempt from succession, the portion belonging to him shall be added to the shares of the other co-heirs designated by testament in proportion to their hereditary shares.

If some of the heirs are jointly designated in a piece of property, the addition is made only to those co-heirs.

Article 383

If the testator has disposed of by testament only a part of his property, even if he had jointly designated several heirs in this part, the share of those who for reasons stated in the preceding article cannot or will not inherit, passes to the legal heirs of the testator.

Legacy and burden

Article 384

The testator may charge the heir or heirs designated in the testament, from those indicated in articles 361, 363 and 364 of this Code, to provide one or more legal heirs with a profit from the inheritance, without making them heirs (legacy).

If the testator, who has no heirs from those indicated in articles 361, 363, 364, has designated in the testament other persons as heirs, he may charge them with legacies for the benefit of everyone.

Dispositions for capacity to inherit apply also to the legatee.

Article 385

A legatee has the right to demand fruits or interest resulting from the legacy from the date he has been designated to the delivery of legacy and, at its absence, from the date of notification of the claim.

They can be demanded from the testator's date of death, if the testator has disposed of expressly or if the legacy is a cash deposit.

Article 386

The testator may charge the heir or heirs designated in the testament to carry out any action beneficial to society or any other action without giving the right to a specific person on this action (burden).

When the testator disposes of the property by testament to the State, its organs, or different entities, he has the right to specify the purpose for which the property must be used.

Article 387

If the heir charged with a legacy or burden should die before the testator, or should become unworthy, or should renounce the inheritance, and the testator has not designated another heir in his place, the co-heirs or the legal heirs, who were added or transferred the part thereof and for the reasons above cannot or will not inherit, shall be charged for the execution of the obligations related to the legacy or burden.

If the performance of obligations related to the legacy or the burden is closely connected to this person, who for the reasons above cannot or will not inherit, the legacy or burden shall not take effect.

Article 388

If among the heirs, none of them has been charged by the testator to settle legacy, each heir shall be obliged to contribute to its settlement in accordance with their share.

Article 389

When the thing given by way of legacy is shown only as a kind or as a measure, the right of choice belongs to the inheritor, but the things cannot be below average quality.

Article 390

If the legatee should die before the testator or should become unworthy, or should renounce the legacy and the testator has not designated another person in his place, the legacy goes in favor of the heir charged with that legacy.

But if the legacy is left to more persons jointly, the share of those who cannot or will not get the legacy shall be added to partakers thereof in proportion to their shares.

Article 391

The legatee has the right to demand the execution of the obligation related to the legacy from the heir charged thereof.

Execution of the heir's obligation regarding the burden may be demanded by the executor of the testament, the co-heirs, the relevant state or private organizations.

Obligations related to the legacy and burden shall be executed after obligations encumbering the property.

Form of testaments

Article 392

Testaments are in two forms: holographic or by notarial act.

Holographic testament

Article 393

A holographic testament is entirely written by the hand of the testator, including the date and his signature.

Date of the testament must indicate the day, month and year.

The signature is placed at the end of dispositions.

Article 394

The person who is not capable to read his own handwriting cannot make holographic testament.

Article 395

Persons who cannot hear (deaf) or who cannot hear and speak (deaf and dumb), can dispose of by holographic testament or by testament received from the notary, according to the rules stipulated in the Law "On Notary".

Article 396

The holographic testament may be deposited with a notary for safekeeping in accordance with provisions for storage of documents at the notary.

Testament by notarial act

Article 397

Testament by notarial act shall be edited by a notary and signed by the testator in the presence of a notary.

If the testator does not know how to, or because of illness or physical handicap cannot sign, the testament shall be signed in accordance with the rules stipulated in the Law "On Notary".

Special testaments

Article 398

(Words "or the secretary" are repealed by Law no. 8781, dated 3.5.2001)

In places where there is no notary, the testament may be certified by the mayor or the head of commune.

Article 399

The testament of a person in military service may be certified by the commander of the military unit which he is part of and, when hospitalized for treatment, by the director of the hospital.

Article 400

The testament of a person on board of an Albanian ship navigating or that had arrived at a foreign port, may be certified by the captain of the ship.

Article 401

Testamentary disposition made by a suspense condition shall take no effect, if the person in whose favor it was made should die before the testator.

Revocation of testaments

Article 402

The testament of a later date shall revoke a testament of an earlier date in whole or only the part that is incompatible with the new one.

The testament shall also be revoked by a statement made by the testator to the notary.

Invalidity of testaments

Article 403

The testament shall be void if made by a person who cannot make a testament (Article 373).

Article 404

The testament shall be void if it is not made in the form required by law.

Article 405

The testament shall be void if the testamentary disposition is made to the benefit of persons who cannot inherit (articles 374, 375).

Article 406

The testament shall be void if the testamentary disposition is contrary to Articles 377 and 384 of this Code.

Article 407

The testament shall be void if the testamentary disposition made by the testator, excludes his minor heirs or heirs unable to work from legal succession, or prejudices their legal share.

Article 408

The testament shall be void if the testamentary disposition is made contrary to the law or by fraud.

Article 409

The testament shall be void if the testamentary disposition is made under the influence of fraud, intimidation or violence, or because of a mistake, without which the testator would not have made this disposition.

Article 410

When the testament is declared void by the court, legal heirs shall be called to inherit, unless it is the case of adding in the benefit of the heirs designated in the testament under Article 381.

When only some of the testamentary dispositions are declared void, the other dispositions take effect.

Article 411

A claim for invalidity of a testament or testamentary disposition can be filed by an heir or any other interested person within three years from the opening of the inheritance.

Article 412

If the testamentary disposition is void for the reason that the disposition made by the testator excludes his minor heirs or heirs unable to work from legal succession, or infringes their legal share (Article 407), the heir, who is excluded from succession or infringed in his legal share has the right to demand from the other heirs, as appropriate, the delivery or completion of the portion attributable to him under the legal inheritance.

Article 413

For the assignment of this share, all assets of the testator at the time of his death shall be gathered, by subtracting liabilities encumbering the inheritance and it shall be divided by the number of heirs who would be called to inherit, if the testator would not have made a testament.

Executor of the testament

Article 414

The testator can appoint one or more persons to execute the testament.

The appointment as executor must be accepted by the person himself in the testament or with a separate declaration attached to the testament.

If the testator does not appoint an executor of the testament, the execution of the testament is charged with the heirs designated in it.

Article 415

The executor of a testament must make the inventory of the hereditary property, inviting the heirs and other persons who benefit from the testament to attend.

The executor of a testament shall administer the hereditary property, carrying out actions that are necessary for the execution of the testamentary dispositions, but he cannot alienate the hereditary property, unless the need arises and with the permission of the court, which decides after having heard the heirs first.

Article 416

The district court, at the request of the heirs or persons who have an interest, may dismiss from duty the executor of a testament for serious violations of his duty or incompetence in administering the hereditary property.

Article 417

The powers of the testamentary executor shall not be transmitted to his heirs.

Article 418

When there are several testamentary executors, in the absence of others, even one of them can act, but they are all solidary liable for the assets entrusted to them, unless the testator has divided duties among them.

PART IV
OBLIGATIONS

TITLE I
GENERAL PROVISIONS

CHAPTER I
MEANING AND ARISING OF OBLIGATIONS

Meaning of obligation

Article 419

An obligation is a legal relationship through which one person (the debtor) is obliged to give something or to perform or not to perform a specific action to the benefit of another person (the creditor), who has also the right to demand to be given something, or the action be performed or not performed.

Arising of obligations

Article 420

Obligations arise from contracts or by law.

Economic nature of obligations

Article 421

The object of the obligation must have an economic assessment and must respond to the interests of the creditor, even to his interests not related to property.

Correctness of participants in obligation

Article 422

The creditor and the debtor should act towards one another correctly, impartially and according to reason.

CHAPTER II
SOLIDARY OBLIGATIONS

Article 423

Solidary liability is when a creditor or each of the creditors has the right to demand the execution of the same obligation completely or partly by the debtors together and by each of them separately.

Article 424

There is a solidary liability when the obligation comes from the will of the parties or when provided by law.

Article 425

There is a solidary liability even when the debtors are bound each in a different manner or when the joint debtor is bound to each creditor in a different manner.

Article 426

Execution of the liability by one of the solidary debtors shall discharge all other debtors.

The solidary debtors shall be discharged of the obligation even by providing an object in the execution of the liability or by compensation of the credit from one of the solidary debtors to the creditor.

Article 427

The tardiness of a creditor against one of the solidary debtors shall extend the effect to all other debtors.

A solidary debtor cannot compensate his obligation with the credits that the other debtors have to the creditor.

A solidary debtor cannot claim against the creditor the personal objections of other debtors.

Each one of the solidary debtors should not encumber the position of others with his actions, unless otherwise provided by law.

Article 428

The debtor has the right to choose to pay one or another solidarity creditor, unless previously prevented by written notice from any of them.

There is a solidarity of solidary creditors when each of them has the right to demand payment of all obligations and, the payment made to one of them releases the debtor from all creditors.

Article 429

Renewal of the obligation made by the debtor with one of the creditors shall release all other debtors, unless the creditor has retained the rights to them.

Remission of the obligation made to one of the solidary debtors shall release all other debtors. When remission is made only to the share which affects one of the debtors, the obligation of other debtors is reduced to the extent of the remitted share.

Merger of qualities of creditor and solidary debtor in a single person, extinguishes the obligation of the other debtors, for the share of this debtor.

Article 430

In their relations, the solidarity debtors participate in settlement of the obligation each according to his share.

The debtor, who has executed a solidary obligation, has the right to demand from other debtors the payment in equal parts of the obligation executed by him, unless the law or the contract provides otherwise.

When the solidary debtor, who has executed the obligation, could not be reimbursed by a debtor for his share of liability, such share shall be borne by all his co-debtors as appropriate in equal parts or proportionally among the other debtors, including him.

Article 431

Solidary debtors are bound to cover in proportion to their shares all the expenses proven to have been necessary to perform by the debtors who have executed the obligation.

Article 432

A solidary debtor, who executes the obligation, should claim against the

creditor the common objections of all debtors, otherwise he shall lose the right to demand from the other debtors the share they are entitled for settlement of the obligation. Also, he shall lose this right even if he has not notified the other debtors that he has executed the obligation and, as a consequence one of the other debtors has executed it separately.

Article 433

Interruption of prescription through the actions of the creditor towards one of the solidary debtors, as well as interruption of the prescription by one of the solidary creditors towards the mutual debtor, shall affect other debtors as well as other creditors.

Suspension of prescription towards one solidary debtor or towards one solidary creditor, shall not affect the others.

Renunciation of prescription in accordance with Article 126 of the Code made by one of the solidary debtors, shall not affect the others, while the renunciation of prescription by one of the solidary creditors, shall affect the others.

Article 434

A solidary debtor, who is requested to pay his share of the obligation, cannot claim the prescription of the creditor's claim against the debtor who paid it, unless he himself and the debtor who demands the share had had the opportunity to claim the prescription completed.

This paragraph shall not apply where by agreement the solidary debtors have decided otherwise.

Article 435

If execution of the obligation has become impossible for the fault or continuing delay of one or more solidary debtors, the other debtors shall not be released of the obligation to complete it.

The creditor may seek compensation for damages caused to such a cause only from the solidary debtors or by each of them, for whose fault the execution of the obligation has become impossible, or from those who have been in delay. The other debtors remain as solidary debtors only to the first obligation.

Delays of one of the solidary debtors shall not bring any legal consequences for other debtors.

CHAPTER III
ALTERNATIVE OBLIGATIONS

Article 436

An alternative obligation is one wherein the debtor is released from the obligation, by completing one of the kinds of the obligation to the creditor or to a third party as mentioned separately according to his desire. The debtor cannot demand from the creditor to accept the completion of the obligation partly from one kind and partly from the other kind.

Article 437

The right to choice belongs to the debtor, unless provided for by law or contract to be left to the creditor or a third party.

The choice becomes irrevocable upon the completion of one of the kinds of obligation, or upon notice of the declaration of choice to the other party or both parties, if the right of choice belongs to a third party.

When the right of choice belongs to many people and they cannot agree, the court assigns them a deadline. When the choice is not made in due time, then it is made by the court.

Article 438

If in an alternative obligation, the debtor does not execute any of the kinds of obligations in due time, the right of choose passes to the creditor.

If the right of choice is left to the creditor and he fails to exercise it within the deadline specified in the agreement or by the debtor, the choice passes to the latter.

If the right of choice is left to a third party and he does not exercise it within the deadline set, the choice shall be made by the court.

If this right is left to several persons, the court assigns them a deadline. If the choice is not made within the deadline set, it is made by the court.

Article 439

The alternative obligation is simple when one of the two kinds of obligation cannot be subject to the obligation, or when its completion has become impossible through no fault of either party.

Article 440

If the right of choice is left to the debtor, the alternative obligation shall become simple if one of the two kinds of obligation becomes impossible even for his fault. If this impossibility occurred because of the fault of the creditor, the debtor is released from liability if he refuses the other obligation be applied and claim compensation for the damage.

If the choice is left to the creditor, the debtor is released from liability if the impossibility to complete one of the two kinds of obligation occurred through the fault of the creditor and he does not accept the other kind of obligation be executed and claim compensation for the damage. If the choice is left to the creditor and the impossibility is charged to the debtor, the creditor may choose the other obligation or claim compensation of the damage.

Article 441

If the two kinds of obligation have become impossible and the debtor is held responsible to one of them, he must pay the value of the obligation that is made impossible the last, if the choice is left to him.

If the right of choice is left to the creditor, he has the right to claim the value of one or the other kind of obligation.

CHAPTER IV
DIVISIBLE AND INDIVISIBLE OBLIGATIONS

Divisible obligations

Article 442

When many debtors or creditors take part in the same obligation and the obligation is divisible, each debtor is bound to execute and each creditor has the right to demand an equal share of the liability, unless the contract or the law provides otherwise.

Indivisible obligations

Article 443

When there are many debtors in the same obligation that is indivisible, all the debtors are called solidary debtors.

The obligation is indivisible by its nature and as such even by the intention of the parties to the contract. In such cases, the obligation remains indivisible even to the heirs of the debtors.

Article 444

Indivisible obligations are governed by the provisions relating to solidarity obligations, except as provided in this chapter.

CHAPTER V
MONETARY OBLIGATIONS

Article 445

Obligation to deliver a sum of money is paid to its nominal value, unless otherwise provided by law or by contract.

Article 446

Monetary obligation is fulfilled in the currency that is in circulation in the country where payment is made or in the currency stipulated in the contract.

Article 447

If the creditor has a current account in the country where the obligation should or could be paid, the debtor may discharge his obligation by crediting the respective amount in this account, unless the creditor has excluded payment on this account.

Payment is considered complete at the time it is credited to the account.

Article 448

Payment is made at the residence of the creditor at the date of payment. The creditor may designate another place within the borders of the state where he resides at the time of payment or at the time the obligation arises.

Article 449

If the payment must be made in a place other than the residence of the creditor at the time the obligation arises and the fulfilment of this

obligation would become exceedingly difficult, the debtor may suspend payment until the creditor has assigned another country which would avoid surplus costs.

Article 450

Compensation for any damage caused as a result of the delay in the payment of a sum of money, consists of matured interests from the date of commencement of the debtor's delay in the official currency of the country where the payment is made. The rate of interest is determined by law.

At the end of each year, matured interests are added to the sum of the obligation on the basis of which their calculation is made.

Legal interest is paid without the creditor being obliged to prove any damage. When the creditor proves that he has suffered a greater loss than the legal interest, the debtor is obliged to pay him the rest of the damage.

Article 451

When the obligation is related to the payment of a sum of money in a currency for which there is no official exchange rate in the country where payment is made, the debtor is entitled to execute the obligation in the currency that there is an official exchange rate in the country where payment is made, unless the law or the contract provides otherwise.

Article 452

When the obligation is related to the payment of a sum of money in a currency different from that of the country where payment must be made and the debtor claims that he is unable to pay the debt in that currency, the creditor may accept payment in the currency of the country where payment must be made.

The above rule also applies when the debtor is obliged to pay in the currency initially accepted.

Article 453

If the obligation must be executed in a currency other than the one initially accepted, the conversion should be done with the official exchange rate of the day of payment.

Article 454

Article 450 of this Code does not deprive the creditor of the right to seek compensation for damage incurred from the fact that from the date of default by the debtor the exchange rate of the currency defined in the obligation has changed.

TITLE II
EXECUTION AND EXTINGUISHMENT OF OBLIGATIONS

CHAPTER I
EXECUTION OF OBLIGATIONS

Article 455

The debtor and creditor must exercise due diligence and be punctual in fulfilling the obligation in accordance with its content.

Article 456

Obligation to deliver a specific thing contains even the care that must be taken to preserve it until its delivery.

Article 457

When the object of the obligation is the delivery of the thing specified as to its kind, they cannot be of lower quality than average quality.

Article 458

Delivery of things is conducted in the manner specified in the contract and when it is not defined, it is conducted:

a) By handing the thing over to the person who has acquired ownership of it or the person who has acquired rights over it;

b) By giving it to the carrier or post office to deliver it to the winner, at the place indicated by him;

c) By handing it over to the winner or sending the documents by mail (charge sheet, certificates of deposit) that give him the right to dispose of the goods.

Article 459

The debtor cannot execute the obligation in parts even if it is divisible, without the consent of the creditor.

Article 460

The obligation can also be performed by a third person who is not a debtor, unless the creditor is concerned that the execution be done by the debtor, or when the creditor has been notified to the debtor's opposition.

Place of compulsory execution

Article 461

If the place where the obligation should be performed is not defined by the contract, by law or is not understood by the nature of the obligation, the performance is done:

a) For the delivery of an immovable thing, it is performed in the place where it is;

b) For things that are defined individually, it shall be performed at the place where the thing was at the time the obligation arose;

c) For the delivery of a thing determined as by kind and quantity, it is performed at the place where the debtor carries out his professional activity or at his residence;

ç) For obligations in cash, it is performed according to rules set out in Chapter V of Part IV of this Code.

Article 462

The creditor cannot be obliged to accept a thing different from those defined in the scope of the obligation even if the value of the thing offered be greater.

Time of performance of the obligation

Article 463

Execution of the obligation must be done within the time specified in the contract. When the contract does not specify the time, or execution of the obligation is left at the request of the creditor, he may require the execution of the obligation at any time and the debtor must execute it within fifteen days from the day the creditor has requested it.

Article 464

The time defined in the contract is presumed to have been set to the benefit of the debtor, unless from the will of the parties or the nature of the obligation it appears otherwise. Execution of the obligation before the deadline shall not be considered invalid, unless the deadline is set in favor of the creditor.

Article 465

The debtor cannot claim the right of time when:

a) He has gone bankrupt;

b) He has not given the promised guarantees;

c) Guarantees that provide credit insurance have been reduced due to his fault, unless they remain and still constitute a sufficient insurance for the execution of the obligation.

Execution for the benefit of the creditor

Article 466

Execution of the obligation must be made to the creditor himself, or to his representative, or to a person authorized by the creditor, by law or by the court.

Execution of the obligation made to a person not authorized to accept it, shall release the debtor only if the creditor has accepted the execution later, or it is evidenced that he has benefited from it.

Execution for the benefit of a third party

Article 467

The debtor, who executes an obligation for the benefit of a person, who under unmistakable circumstances seems to be authorized to accept it, shall be released from the obligation if he proves that he has been in good faith.

The person who has accepted the execution of the obligation, is obliged to return what he has taken from the execution of the obligation to the real creditor.

Execution for the benefit of the creditor unable to act

Article 468

If the execution of the obligation is made to a creditor who is unable to act, it shall release the debtor as much as it has gone in favor of the creditor, or of his legal representative.

Execution on behalf of many obligations

Article 469

When the execution is carried out on behalf of many obligations and to the same creditor, the debtor may determine at the time of execution which of the obligations he is executing.

If the debtor does not determine the order of execution, the obligation that has expired shall be executed first, if there are more such obligations, execution starts with the obligation having the highest value and, if there are more such obligations, it starts with the oldest and when they have the same seniority, the execution is done proportionally.

Article 470

Execution in cash on behalf of a specific obligation firstly contains payment of expenses, then payment of matured interest rates and then payment of the obligation itself and common interest to it. The creditor may refuse payment if the debtor during the execution assigns a different order or may not accept full payment of the value of the obligation; without receiving matured interests, ongoing interests as well as related expenses.

Article 471

The creditor may refuse execution of the obligation for the delivery of a thing different from what is stipulated in the contract even if the value of the thing being offered is equal to or greater.

Costs of execution and relevant certificates

Article 472

The costs are borne by the person who executes the obligation, while costs of the certificate are borne by the person in favor of whom it is issued.

Article 473

For every payment done in execution of the obligation, the creditor gives a receipt, unless otherwise defined by the contract.

If the creditor has a document from the contents of which results the obligation, the debtor who has executed it may request the return or destruction of that document, unless the creditor has reasonable interests to maintain it, provided that he notes execution of the obligation in the document.

If the creditor refuses to comply with the obligation under the preceding paragraph, the debtor may suspend the execution of the obligation. If the creditor claims to have lost the document, he is obligated to give the debtor a written statement in which the execution of the obligation is accepted. The declaration must be notarized if required by law.

Article 474

When identical payments to settle the obligation should be done periodically, the receipts issued for two consecutive payments presume the previous payments.

The receipt issued by the creditor for the main obligation, presumes that interest rates and the costs of this obligation are also paid.

Release of things from guarantees

Article 475

A creditor who has accepted the execution of the obligation, should release the things from real guarantees provided for the execution of the obligation and from any other obstacle that may limit the use of property.

CHAPTER II
EFFECTS OF NON-PERFORMANCE OF OBLIGATIONS

GENERAL PROVISIONS

Article 476

Any shortcomings in the execution of obligations oblige the debtor to

compensate the creditor for the damages incurred, unless he proves that the failure to perform the obligation has not come because of his fault.

In this case, the creditor is entitled:

a) To demand the execution in kind of the obligation, particularly the delivery of a thing or the execution of works, as well as compensation for the damage caused by delay of the execution; or

b) The compensation for damage incurred by non-execution of the obligation.

Article 477

The debtor who is using the work of third parties for the execution of the obligation shall be held responsible for their actions, committed with guilt, as if they were his own.

Article 478

When the obligation is related to actions that can also be performed by other persons and the debtor does not execute the obligation, the creditor is entitled to request to conduct these actions himself on behalf of the debtor.

Article 479

Any agreement that excludes or restricts the parties from the liability for non-execution of obligations is void.

Article 480

If execution of the obligation is made impossible for the fault of the debtor, the creditor is entitled to request from him compensation for the damage incurred.

The debtor is guilty when, intentionally or negligently, has created circumstances that made the execution impossible, or when he has not taken measures to stop it.

Delay of the debtor

Article 481

If the debtor fails to fulfil an obligation within the time set, it is deemed to be in default (morë) unless the non-execution is the result of circumstances not related to the fault of the debtor.

The debtor gets in default by a notice in writing. It is not necessary to put the debtor in default if:

a) The debtor has declared in writing that he does not wish to exercise the obligation;

b) The time within which the obligation would be executed has expired;

If the debtor dies and the deadline set for execution of the obligation ends after his death, his heirs are deemed to be in default at the end of 15 days after a written notice from the creditor.

c) If the obligation is derived from an illegal act.

Article 482

The debtor in default shall not be released of by the unexpected impossibility of performance of the obligation, even though it should not be caused through his or the creditor's fault, unless he proves that the object of the obligation would be destroyed or damaged even if it was under the auspices of the creditor.

Loss or damage of the thing taken illegally, does not discharge the person who received it from the obligation to return its value.

Article 483

The provisions on delays do not apply to obligations containing omissions. Any action contrary to them constitutes a breach of the obligation.

Article 484

The creditor may not accept the offer of the debtor in default for the execution of the obligation, if it does not include the compensation of the damage incurred and expenses incurred during the delay, or when the creditor due to default of the debtor has no interest for the execution of the obligation.

Article 485

The debtor who has a credit payable by his creditor, may suspend the execution of the obligation up to the payment of the credit, provided that there are sufficient connections between the loan and the obligation, such as could be among others, the existence of a single legal report, or relationships that the parties have had on a regular basis.

The suspension of the execution of the obligation cannot be required when:

a) The execution of the obligation by the other party becomes impossible due to the delay of the creditor, or it is impossible on a permanent basis;

b) The credit of the other party is non-seizable.

Article 486

Damages to be compensated by the debtor for non-execution of the obligation consist of all losses incurred by reduction of the property and the profit to be drawn in terms of the common market (missing profit). As a part of the compensation for damages repair are also the reasonable and necessary costs to prevent or reduce the damage, which are related to the circumstances which the liability of the party is bases on, reasonable and necessary costs to determine the damage and liability, and those that are needed to find a solution out of the court for the fulfilment of the obligation.

Article 487

In a contract with mutual obligations, the parties must execute their obligations at the same time, unless the contract or the nature of the obligation states that one party must execute its obligation before the other.

Article 488

If in a contract of mutual obligations, the execution of the obligation of a party is made impossible through no fault of either party, none of them has the right to demand from the other party to execute the obligation or compensate the damages, unless the law or contract provides otherwise. Each party has the right to demand from the other party to return what was given for the execution of the obligation.

Article 489

If in a contract with mutual obligations, the execution of the obligation of one party is made impossible, because the other party has fallen into insolvency or bankruptcy, or for any other circumstances occurring for its fault, the other party has the right not to execute its obligations until the execution of the obligation to its benefit is ensured, or seek compensation for the damage incurred by the failure to execute the contract.

Article 490

If it is decided that the compensation for non-execution of the obligation or its delayed execution must be paid to the creditor, the court taking into account the property status of the debtor, can set a different deadline for payment of this compensation, or allow it to be paid in instalments.

Delay of the creditor

Article 491

The creditor is in default when by no legal reason refuses the execution of the obligation by the debtor, or due to circumstances created by the fault of his own, does not fulfil the obligation to the debtor, without which the latter cannot execute his obligation.

Article 492

When the creditor is in default, the debtor has the right to demand compensation for the damage incurred by it and shall be released from the obligation, if later on the execution of his obligation becomes impossible, unless the impossibility of execution of the obligation is due to his fault.

In cash obligations, if the creditor is in default, the debtor does not pay interest.

Article 493

When the damage incurred by the non-execution of the obligation is also caused or increased by acts or omissions due to the fault of the creditor, or if the latter has not shown due diligence to reduce this damage, the court, as appropriate, may reduce the amount of compensation or completely discharge the debtor from his obligation to pay.

Article 494

The creditor in default cannot demand undertaking of actions for a forced execution.

Article 495

If the creditor is in default or is not found, the debtor is entitled to execute the obligation by depositing the thing with a person who carries out deposit activities or in a place determined by the court of the district of the execution of the obligation. When the object of the obligation is

money, securities or valuable documents, or precious items, they must be deposited in the bank.

Making the deposit suspends the running of the interest.

In cases where depositing requires large expenses, is hard to do, or the item put on deposit is perishable, or due to its nature cannot be left on deposit, the debtor, after having informed the creditor, requires the court to be allowed to sell the preceding item and to deposit the value obtained from the sale to the State bank on behalf of the creditor.

If the debtor draws the deposited item before it is accepted by the creditor, the deposit is deemed as not made.

The depositor delivers the item to the creditor only after the latter has paid all the expenses for the execution of the obligation.

CHAPTER III
SUBSTITUTION AND TRANSFER OF CREDIT

Substitution of debtor

Article 496

Substitution of the debtor for another person, who assumes the obligation, can be done only with the consent of the creditor. The substituted debtor shall be discharged from his obligation to the creditor.

Guarantees provided by third parties to the obligation shall extinguish, if the latter have not given consent for the guarantees to remain with the new debtor. The pledge or mortgage given by the previous debtor remains in force.

Article 497

The new debtor may claim against the creditor all the objections arising from the obligation he has undertaken and which could also be claimed by the previous debtor, other than those associated with the latter as a person.

Article 498

The agreement, by which the debtor and a third person become co-debtors in an obligation, when the consent of the creditor has been received,

cannot be annulled or amended without the consent of the creditor. Both co-debtors are jointly liable.

Transfer of credits

Article 499

(Third paragraph added by Law no. 8536, dated 18.10.1999)

The creditor may transfer his credit to another person without the consent of the debtor, provided that the credit does not have close personal character and the transfer is not prohibited by the law. Especially, the transfer of credit to another person is not allowed, when derived from causing death or injury to health, as well as from credits that cannot be sequestrated.

The parties to an agreement may exclude the transfer of the credit, but the agreement cannot be claimed against the person the credit is transferred to, unless it is proven that he was aware of that at the time of transfer.

Provisions for credit transfer do not apply to credits related to financial transactions encumbered by insurance, according to criteria established by a separate law.

Article 500

The credit is transferred along with the rights, guarantees and other accessories, including interest on the passed time, unless the contract provides otherwise. The person making the transfer of credit cannot transfer the other person the possession of the pledged property without the approval of the other party (the pledger). Otherwise, the creditor remains the guardian of the pledge.

Article 501

Transfer of credit must be made in writing, otherwise it is not valid.

Article 502

The transfer of credit shall have effect on the debtor and on third parties from the date that the debtor has admitted or has been notified by the former creditor or the new creditor.

The debtor who has performed his obligation, before he was notified of the transfer of credit, shall be released from the obligation.

Article 503

When the credit has been transferred to some specific persons, the transfer notified earlier to the debtor, or admitted earlier by the debtor, with a document (requisition) with the correct date, even if the date could be a later date, shall be preferably for the settlement.

Article 504

Transfer of credit does not affect the debtor's protective remedies.

The debtor may claim against the new creditor objections that may be claimed against the previous creditor, at the time he will be notified about the transfer of credit.

He may seek to be compensated for a credit towards the first creditor, even if still not due at that time, provided that it does not become due after cessation of credit.

Article 505

When the transfer of credit is made when the title is encumbered, the creditor guarantees the existence of the credit at the time of its transfer.

When the transfer is free of charge, the creditor does not guarantee the existence of the credit.

Article 506

The creditor who transfers the credit is not responsible for the insolvency of the debtor, unless he has assumed warranty.

In this case, he shall be responsible for what he has assumed. In addition to that, he shall be responsible for the interests, the costs of transfer, and those that the person, whom the credit has been transferred to, has made for the prosecutions against the debtor and to compensate the damage.

The agreement that intends to aggravate the responsibility of the person who transfers the credit shall be void. When the creditor who transfers the credit has guaranteed the solvency of the debtor, the guarantee ceases, if the non-execution of the credit because of the insolvency of the debtor has come from the negligence of the new creditor to pursue the case against the debtor.

Article 507

A creditor who makes the transfer of credit must submit the other creditor

documents proving the credit, which are in his possession.

When only a portion of the credit is transferred, the creditor is obliged to submit an authentic copy of the documents to the other creditor.

CHAPTER IV
EXTINGUISHMENT OF OBLIGATIONS

Renewal

Article 508

Obligations are extinguished by renewal when the parties will replace the original obligation with an obligation other than the first one.

Article 509

Bailment, pledge and mortgage of the original credit shall be extinguished, unless the parties explicitly have agreed to preserve them for the new credit.

Article 510

Renewal is void if the initial obligation is void.

When the initial obligation results from a nullifying title, the renewal is valid if the debtor has assumed the new obligation recognizing defects of the initial title.

Remission of the obligation

Article 511

The written statement of the creditor for the remission of the obligation shall extinguish the obligation when it is notified to the debtor, unless the latter declares within a specified deadline that he does not want to benefit from the remission.

Article 512

If the debtor has the private document that proves the obligation, it is presumed that the obligation is extinguished by remission, unless it is proved that the document was not willingly returned by the creditor.

Article 513

Removing the guarantee to the obligation, does not presume his remission.

Compensation

Article 514

When two persons owe each other money or things of a kind that are substitutable and their obligations are demandable, accurate and determined in amount or quantity, the obligations of both parties are extinguished by making the compensation between them. The obligations are extinguished up to the sum or the amount of the smallest obligation.

Article 515

Compensation extinguishes the two obligations from the date of their merger.

When for one of the credits or both of them are paid interests, the compensation is made up to the last time on which interests are paid.

Prescription does not prevent compensation if it is not completed on the day of the merger of the two obligations.

Article 516

The compensation is made by means of a statement that one of the parties sends to the other party.

The statement cannot set deadlines or conditions.

When the compensation does not cover the entire credit or when the creditor needs to hold the title of credit in order to exercise his other rights, he may hold it on condition that he notes in the title the content of the statement and delivers a copy of the title of credit to the other party.

Article 517

If the compensation statement sent by one party is not admitted by the other party, the latter shall be obliged to immediately notify the party that has sent the declaration, explaining the causes of refusal.

Article 518

Without the consent of the creditor, cannot be compensated:

a) Credits arising from death or harm of health;

b) Credits that cannot be sequestrated;

c) Credits arising from taxes and fees.

Article 519

Compensation cannot be performed if it is to the detriment of third parties who have acquired the right of usufruct or pledge on the credit.

Article 520

The guarantor may claim compensation of the creditor's obligation against the principal debtor. The principal debtor cannot claim compensation of the creditor's obligation against the guarantor.

Article 521

If two obligations are not payable at the same place, the compensation cannot take place, unless the costs required to transfer them to the place of payment are taken into account.

Article 522

If credits and monetary obligations are included in a single account, they shall be compensated immediately in the order that the parties have agreed in the agreement and in its absence according to the rules stipulated in Articles 469 and 470 of this Code.

The party that administers the account, after closing it through the compensation made, shall notify the other party what is the balance, the exact date of the calculation, and the items that make up the account and which are not yet communicated to the other party.

If the other party does not reject it within a reasonable time, the balance notified shall be regarded as accepted by the parties.

Article 523

If a compensation statement does not adequately show the obligations contained in the compensation, the rules provided for in Article 470 of the Code shall apply.

Each party may immediately object the compensation made, if the calculation of obligation, expenses and interest costs is not carried out according to the rules mentioned above.

Merger of qualities of creditor and debtor in the same person

Article 524

The obligation is extinguished from the time the qualities of creditor and debtor are merged in the same person.

When this merger terminates, the obligation arises again.

Article 525

Merger cannot take place when performed to the detriment of third parties who have acquired the rights of usufruct or pledge on the credit.

Extinguishment due to impossibility of execution

Article 526

The obligation is extinguished when its execution becomes impossible without the fault of the debtor and before he has been put in default.

The obligation is also extinguished when the debtor, though in default, proves that the impossibility would exist even if the creditor was in his place.

In these cases, the debtor must return what he has won without cause to the creditor.

Article 527

If the impossibility to execute the obligation is temporary, the debtor shall not be responsible for the delay of execution for the time it lasts.

But, the obligation is extinguished even when the impossibility lasts for as long as under the title of obligation and its nature, the debtor cannot be obliged to accomplish it, or the creditor has no longer interest.

Article 528

If execution of the obligation becomes impossible only partially, the obligation is executed on the part that it can be executed.

Article 529

If the object of the obligation is the delivery of a thing and it will be completely damaged, or lost through no fault of the debtor and before he is put in default, the creditor takes the rights of the debtor regarding

this thing, depending on the fact that has caused the impossibility of execution of the obligation. The creditor has the right to demand from the debtor what he has received as a result of compensation.

TITLE III
MEANS TO ENSURE THE EXECUTION OF OBLIGATIONS

CHAPTER I
GENERAL PROVISIONS

Article 530

The creditor may be compensated with all the present and future property of his debtor, unless otherwise provided by law.

A property can be encumbered by its owner, in order to ensure payment of an obligation.

The Joint Colleges of the Supreme Court, in the unifying decision no. 932, dated 22.06.2000, reasoned regarding the means of securing the execution of obligations, stating that:

> The means that ensure the execution of obligations, as provided in the Civil Code, are in themselves special subsidiary (supplementary) contracts to the main obligation they secure. As such, they have no impact on the main obligation, and their invalidity, even if it exists, does not affect the existence or validity of the main obligation.

Article 531

Creditors have equal rights to be compensated with the property of the debtor, except for legitimate reasons of preference.

Legitimate reasons of preference are privileges, pledges and mortgages.

Article 532

Pledge and mortgage may be imposed only for an effective obligation.

Pledge and mortgage may be imposed as an obligation of the owner of

the thing pledged or mortgaged, as well as to an obligation of another person.

Article 533

Pledge or mortgage may guarantee an existing credit or a future credit. The credit for which the guarantee is given must be clearly defined.

The pledge or mortgage can also be imposed on a conditional obligation.

Article 534

The pledge or mortgage shall extend respectively on all the works that increase the value to the property, the credits and bonuses that are added to or substitute the encumbered property, including what is compensated from depreciation.

Article 535

Should the things pledged or mortgaged lose or depreciate, the payment of the amounts for which insurers or third parties liable for compensation are obliged to, shall be extracted from the payment of credits associated with the pledge or mortgage, except for the case where they are used for the repair of loss or depreciation of the things.

Article 536

Should the thing pledged or mortgaged lose or damage even due to chance, in order to preserve the rights of the creditor, the latter may demand that he be given a full guarantee on other things and, in its absence, may demand the immediate payment of his credit.

Article 537

Pledge and mortgage are indivisible even if the obligation is divisible.

Article 538

If a pledge or mortgage is imposed to secure an obligation of another person, the owner of the thing pledged or mortgaged may claim against the creditor all the objections that the debtor could claim and seek the compensation of obligation by the credits that the debtor owes to the creditor.

Article 539

Should the creditor not be paid entirely by the thing pledged or mortgaged, he is entitled to receive the outstanding credit from any other property of the debtor, but without the right of preference over other creditors, which he had to the thing pledged or mortgaged.

Article 540

It is void any agreement according to which it is established that in the failure to pay the credit in due time, the ownership over the thing mortgaged or pledged is transferred to the creditor.

CHAPTER II
PENALTY CLAUSE

Article 541

For non-execution or non-adequate execution of obligations, the parties may provide for in the contract the payment of a sum of money or the performance of another liability, to repair the damage or to promote the execution of the obligation.

Article 542

The creditor cannot demand at the same time the payment of the penalty clause and the execution of the obligation.

Article 543

When a penalty clause is assigned to the case of non-execution of the obligation and the debtor does not perform his obligation, the creditor is entitled to demand payment of the penalty clause, and compensation for the portion of the damage exceeding the penalty clause.

When a penalty clause is assigned to the case of non-adequate execution of the obligation and the debtor has not executed his obligation properly, the creditor has the right to demand the execution of the obligation and the payment of the penalty clause, as well as compensation of the portion of the damage exceeding the penalty clause.

Article 544

When a penalty clause is too large compared to the damage incurred by the creditor, the court at the request of the debtor can reduce the penalty clause to the level of the damage incurred.

Article 545

Agreement on the penalty clause should be made in writing, regardless of its size and the form required for the main contract.

CHAPTER III
LIEN

Definition

Article 546

(Second paragraph added by law no. 8536, dated 18/10/1999; Sentence added at the end of the second paragraph, by law no 121/2013)

Lien may be granted over a movable property item, over a right to the holder, upon order or over the usufruct over this property or tight. The lien shall emerge by granting to the creditor or to a third party, determined upon mutual agreement of parties, possession over the property item or title.

The provisions regulating the lien do not apply to the credits connected to financial transactions, whereon security interest has been granted, under the criteria set out by specific law. The provisions regulating the lien shall not apply even in the instances of financial collateral agreements, which are regulated by specific laws.

Form of contract

Article 547

The lien contract shall be documented by the notary, otherwise it is invalid. It shall also include a description of the property item whereon lien has been granted. In the event of lien over the parties, it shall be registered in the book of the members of the company. In the event of lien over the shares, it shall be registered in the book of shares, regarding the shares whereon lien has been granted. Lien can be granted over the whole or a part of the property items being used in an enterprise acting as

an operational corporation. In such an instance the lien shall be effective upon the property items being entrusted to a third party or to a creditor, the latter, on his behalf, managing them as a unified acting corporation.

Protection of creditor

Article 548

The creditor having lost the possession of the property item whereon lien has been granted, he may, in addition to the possession lawsuit, he may also assume the revendication lawsuit, as long as this belongs to the lienee.

Rights and obligations of parties

Article 549

The creditor shall be bound to safekeep the property item whereon lien has been granted and he shall be liable under the general rules regarding its loss and harm.

The lienee shall be bound to pay the expenses incurred for safekeeping and maintaining the property item.

Article 550

Upon the property item, whereon lien has been granted, yielding fruits or income, the creditor shall be entitled to appropriate them, by way of initially making use of them for the expenses and interest and then for the credit, unless it has been provided for differently in the contract.

Article 551

The creditor may not make use of the property item whereon lien has been granted, unless the use is necessary for safekeeping and maintaining it.

He may not grant lien over the property item or give it over to others for use.

Article 552

Upon the creditor abusing with the property item whereon lien has been granted, the lienee may seek imposing attachment over the property item.

Article 553

The person having granted lien cannot seek the return of the property

item, as long as the credit, interests and expenses related to the obligation and the lien have not been paid in full.

Where the lien has been granted by a debtor, the latter being liable to the same creditor regarding another obligation emerging after granting the lien and becoming due prior to the previous obligation, the creditor shall only be entitled to keep the property item until both credits are repaid in full.

Article 554

Where the property item whereon lien has been granted gets harmed or its worth reduces to such an extent that it is doubtful whether it is going to be sufficient as security to the creditor, the latter may, after notifying the lienee, seek authorisation from the court to sell the item.

The court granting authorisation for sale shall also decide on the depositing of the purchase proceeds as a security for the credit.

The lienee may avoid the sale and seek from the court to return the item, by way of providing another real security, which the court holds sufficient.

Where the harm or the reduction of worth of the property item whereon lien has been granted, the lienee may request an authorisation from the court to sell the item, as long as he encounters a favorable opportunity.

The court granting the authorisation for sale shall also determine the conditions for the sale and depositing the purchase proceeds.

Article 555

Upon the property items whereon lien has been granted being spoiled, harmed or expropriated in public interest, the creditors being secured by way of lien shall be entitled to being reimbursed with preference, referring to the preference ranking of their credit, out of the proceeds of reimbursement of the item or out of the expropriation proceeds.

Sale procedure

Article 556

Prior to proceeding with the sale, the creditor shall, through the court, submit to the debtor the request for the payment of the obligation and its accessories, by way of warning that the sale shall occur on the contrary. This notification shall be addressed also to the third party having granted

the lien, as long as this party exists.

Where the request is not objected within five days, the creditor may sell the property item in auction or, upon the item having a market value, may even sell it at this price, by way of a person authorized for such sales.

Upon lien extending over many items, the court shall, referring to the objection of the lienee, restrict the sale only to the item, the worth of which compared to other items is sufficient for baying the debt.

The parties may, regarding the sale of the property item whereon lien has been granted, agree to make use of other forms.

Article 557

The creditor lien taker, at the end of the term, is obliged to collect the rights arising from the lien loan and when this is for money or other equivalent items, he must deposit them himself or at the request of the debtor in the place specified in the agreement and, in the absence thereof, in the place specified by the court. When the term of the loan secured by the lien has expired, the creditor retains from the amount received the amount necessary to fulfill his rights and returns the remainder to the lien giver.

Article 558

The creditor may ask the court to leave the property item with him against charge until the obligation has been performed, referring to the assessment made by the experts or market price, as long as the property item has a market price.

Article 559

Upon the credit whereon lien has been granted emerging out of a document, the lienee shall be bound to give this document to the creditor.

CHAPTER IV
MORTGAGE

Definition of mortgage

Article 560

Mortgage is a real right being put on the property of the debtor or a

third party, to the benefit of the creditor to secure the performance of an obligation.

Mortgage eligible property items

Article 561

Mortgage eligible shall be:

1. Immovable property items;

2. Usufructs over these property items, except the legal usufruct of parents, as well as the emphyteusis related rights over these items.

Types of mortgages

Article 562

Mortgage shall be imposed based on the contract or the law and upon its registration. The contract shall be documented by the notary.

Legal mortgage

Article 563

Mortgage based on the law shall be granted to:

a) seller and any other alienator over the immovable property items being alienated for performing the obligations emerging out of the alienation;

b) co-heirs, members of the companies of economic activities and other partners over the joint immovable properties, to the shares belonging to them for the payment of certain amounts for equalizing and fulfilling their shares.

Article 564

Servitudes being registered following the registration of a mortgage cannot be referred to towards the mortgage creditor.

The above paragraph shall apply even to the right to usufruct, usage and residence.

Judicial mortgage

Article 565

The court decision regarding the payment of an amount of money to

the effect of performing the estimated obligations or for reimbursing the damages due to emerge subsequently shall consist a title for obtaining the mortgage granted over the debtor property.

Mortgage can be granted even based on an arbitration decision consisting an executive title.

Article 566

Upon the mortgage being granted by a person not being the owner of the property item, its registration shall be considered to be valid upon the item being acquired by him.

Mortgage on upcoming property items

Article 567

Mortgage over an upcoming property item may be registered upon the existence of the item.

Mortgage extension

Article 568

Mortgage secures the credit as long as it is on its repayment duration, including the interests, reimbursement of the damage incurred due to the enforcement delay, as well as the expenses sustained for the issue of the credit.

Article 569

Mortgage put on the own part by one of the members in co-ownership shall yield effects with regard to that property item or part of the item which will be acquired by him after the division.

If during the division one member is awarded another property item and not encumbered by mortgage by him, the mortgage shall be assigned to this item at the same registration scale as the original and within the worth of the property being encumbered by mortgage earlier, provided that the mortgage be registered again within 90 days of the registration of the same division.

Venue of registration

Article 570

Mortgage shall be registered at the office of immovable property

registration office of the venue where this property is located.

Article 571

The obligations stemming from the titles upon order or of the holder may be secured by mortgage.

Effect of the inaccuracies of the act

Article 572

Mortgage shall be invalid if, in the mortgage contract or in the basic act of granting mortgage or in the request of granting under the law, irregularities exist concerning the person of the creditor, debtor, owner of the property item encumbered with mortgage, for the property item or amount of credit secured by mortgage.

Registration expenses

Article 573

Mortgage registration expenses are to be defrayed by the debtor, unless it has been provided for differently, however, they have to be prepaid by the requesting party.

Preference of mortgages

Article 574

Mortgage shall yield effects and obtain preference on the date of its registration even if the title refers to an upcoming or conditional credit.

Article 575

The serial number of registrations sets out their preference.

Where concurrently many persons lodge a request for registering a mortgage referring to the same person and over the same property items, the registration shall occur with the same number and this fact shall be noted down in the certificate that the registrar gives to each of the requesting persons.

Article 576

Mortgages being registered with the same number and over the same property items shall compete with each-other, proportional to their respective worth.

Article 577

The registration of a credit serves to put the expenses of the act, registration and renewal, as well as other expenses needed for the executive procedures at the same preferential scale.

The registration of a credit in cash yielding interest has the effect of the interest standing at the same preference scale, provide that the interest be set out at registration.

The interest in such an instance shall be restricted to two preceding years, as well as to the current year, to the day that it has been disposed of until the day of completion of proceedings of foreclosure.

Mortgage impact

Article 578

Mortgage registration shall be of effect for a period of 20 years since the date of its accomplishment. The effect shall cease if it is not renewed prior to the expiry of the deadline. Following the expiry in indicated above, the creditor may affect a new registration, however, the mortgage in such an instance shall be ranked and be of effect towards the third parties referring to the new date of registration.

Article 579

The assignment of the credit secured by mortgage to another person and imposing the attachment on this credit shall be of effect following the entering of the respective note at the mortgage registration.

Article 580

Where the creditor holding mortgage over one or more property items incurs damages since their proceeds were used to pay in full or in part a previous creditor, whose mortgage extended over other property items of the same debtor, may be subrogated to the mortgage registered to the benefit of the paid creditor, in order for him to assume the mortgage lawsuit over those properties, being of preference to the other creditors following him in succession. The creditors sustaining harm due to the subrogation referred to above shall be entitled to the same right.

Reduction of mortgage

Article 581

Mortgage reduction shall occur by way of restricting it to the part of the property indicated in the registration or by reducing the amount whereon the registration has been entered.

Article 582

The request for the re-education of mortgages according to the above articles shall not be admitted, as long as the entirety of assets or amount was determined by way of agreement or court decision.

However, upon partial payments being made, thus lapsing at least one fifth of the initial obligation, a proportional reduction of the amount may be requested.

Upon a building being encumbered by mortgage, the mortgagor may, following the registration having made additional constructions, request that the mortgage be reduced so that additional constructions be exempted.

Lapse of mortgage

Article 583

The mortgage shall lapse:

a) upon the lapse of the obligation;

b) upon the loss of the property item encumbered by mortgage, abiding by the rights provided for in Article 536 of this Code;

c) upon the relinquishment of the creditor;

ç) upon the payment of the sale price by way of foreclosure to the creditors secured by mortgage, referring to their rank preference;

d) upon the expiry of the period to which mortgage was restricted.

Deletion of registration of mortgage

Article 584

The registration of mortgage shall be deleted:

a) upon the consent of the creditor granted by notarial act;

b) upon a final court decision ordering the deletion.

The deletion of registration shall lapse mortgage. Where the cause of the lapse of obligation is declared invalid, mortgage shall emerge and be registered again, however, with a new serial number.

CHAPTER V
SURETY

Contents

Article 585

Surety is a legal transaction wherewith a person (guarantor) shall be obliged to secure the performance of an obligation of a third person (main debtor) to the creditor. Surety shall be valid even where the debtor is not aware of it.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, reasoned the following regarding the legal concept of suretyship [*references from the decision text have been omitted*]:

> [...] Through suretyship, a third party in the creditor-debtor relationship, the guarantor, guarantees the fulfillment of the obligation by the latter (the debtor) and undertakes to fulfill it personally in the event of the debtor's "failure". As a legal obligation relationship, it may originate from law, an agreement between the parties, or a court decision.
>
> [...] Suretyship, as a legal act and expression of will, is a bilateral contract concluded between the guarantor and the creditor, while the debtor, as a rule, remains unbound by this relationship. The debtor's consent is not required for the perfection and constitution of the suretyship relationship. The purpose of suretyship is not to guarantee the debtor but to secure the creditor.
>
> 40. Suretyship is categorized as a personal and subjective security instrument because the guarantor guarantees the fulfillment of the main debtor's obligation with all their present and future assets unless otherwise provided in the surety contract. The guarantor guarantees the creditor regarding the debtor's personal qualities, reliability, and ability to fulfill the obligation.

Furthermore, the guarantor assumes the risk by securing the execution of the obligation with their assets without pledging a specific asset as collateral.

This characteristic differentiates suretyship from real security instruments such as pledges or mortgages, which are inextricably linked to the respective asset that individualizes the parties in the contract. As a personal security instrument, suretyship is not tied to a specific asset but rather to the guarantors overall assets.

41. Suretyship always has the nature of an accessory legal relationship concerning the primary legal relationship between the creditor and the debtor. It exists only for an actual obligation and may be provided for a future obligation and/or a conditional obligation. As such, it is functionally and integrally connected to the main legal act (accessorium sequitur principale).

This connection always influences how it arises, develops, and terminates. Such a characteristic distinguishes the legal relationship of suretyship from joint and several liability in general.

[…]

43. Suretyship is a subsidiary and conditional legal relationship, meaning it is activated only when the primary debtor fails to fulfill the obligation. This means that the verification of the condition, the debtor's delay, or their default in fulfilling the obligation triggers the guarantor's civil liability towards the creditor. This characteristic is another distinguishing feature of suretyship compared to joint and several liability.

Article 586

Surety shall be in place just for an effective obligation.

Surety may be granted for an upcoming obligation, as well as for a conditional obligation.

Form and validity

Article 587

Surety shall be documented.

Article 588

Surety shall not be valid as long as the main obligation is not valid. It can

be granted for the main debtor, as well as for his guarantor.

Effects of surety and obligations of parties

Article 589

The guarantor shall be liable to the extent of the obligation of the main debtor, including the payment of the interests, damages incurred due to the delays in enforcement and other expenses that the contractor has sustained to collect his credit, unless it has been accepted in the agreement that the surety is granted even for one part of the obligation, or with milder or less strict conditions than the main obligation.

The surety subrogating the obligation or granted at more severe conditions than the main obligation shall be valid to the limits of the latter.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the effects of suretyship, has determined that [*references from the decision text have been omitted*]:

> [...] The College concludes that the suretyship contract begins to produce the effects provided by law from the moment it is concluded, and the status of the debtor and the guarantor becomes equal when the obligation becomes due. At that moment, as a rule, the creditor may address either the debtor or the guarantor.
>
> Referring to Articles 589, 590, and 591 of the Civil Code, the status of the guarantor is equated with that of the debtor only concerning the portion of the obligation, the order of execution and the division of the obligation among multiple guarantors, as the parties may have specified in the suretyship contract.

Article 590

The guarantor shall be jointly liable above the main debtor for performing the obligation, unless it has been provided for differently in the agreement.

Parties may agree that the guarantor shall not be liable to make any payments prior to undertaking all the necessary arrangements binding the debtor to perform the obligation. Where the guarantor is sued and he seeks to refer to such an entitlement, he shall indicate the assets of the main debtor due to be subject to enforcement. The guarantor shall be bound to prepay the necessary expenses, as long as the parties have been agreed otherwise.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of Article 590 of the Civil Code, has reasoned as follows [*references from the decision text have been omitted*]:

> [...] This provision, at the moment when the principal obligation becomes due and there is no different agreement between the parties for a subsidiary suretyship, makes the principal obligation equally enforceable against both the primary debtor and the guarantor. From this moment, the guarantor is considered a joint debtor or co-debtor.
>
> This means that an interpretation consistent with Article 590 of the Civil Code would be one that makes the principal obligation simultaneously enforceable against both the primary debtor and the guarantor, granting the creditor the right to choose between the two jointly liable debtors.
>
> [...]
>
> Subsidiary suretyship applies when, in order to activate the financial liability of the guarantor, the creditor must first pursue and exhaust all legal means of recovering the debt from the primary debtor. Only when it is determined that the debt cannot be recovered from the primary debtor's assets does the creditor gain the right to turn to the guarantor. At that point, the guarantor's financial liability toward the creditor arises for fulfilling the debtor's obligation.
>
> […]
>
> [...] Joint suretyship places the creditor in a much more favorable position than subsidiary suretyship for debt recovery, as it grants the creditor the discretion to choose which assets will be used to satisfy the debt - whether from the guarantor, the primary debtor, or both simultaneously.
>
> […]
>
> [...] as a rule, unless the parties have agreed otherwise, from the moment the primary debtor defaults, both the debtor and the guarantor become jointly liable to the creditor for fulfilling the obligation. The creditor may choose any of the legal avenues available to enforce the obligation against either the debtor or the guarantor, who from that moment is treated as a jointly liable co-debtor.

Article 591

Upon many persons becoming guarantors for the same debtor and to secure the same obligation, each one of them shall be liable for the entire obligation, unless there is an agreement for the division.

Article 592

The guarantor shall be entitled to refer to all the demurrers to the creditor that the debtor would be entitled to refer to and seek the reimbursement of all that the creditor owes to the debtor, even if the latter has relinquished these rights or assumed the obligation.

Article 593

The guarantor having performed the obligation instead of the debtor shall assume the position of the creditor regarding all his rights to the debtor.

Article 594

Upon many main debtors being jointly bound by the same obligation, the guarantor having granted security for all of them shall be entitled to the lawsuit of reinstatement to each of them for collecting the amount he has paid.

Article 595

The guarantor having performed the obligation of the debtor while not being sued and falling short of giving notice to the main debtor, the latter may refer to the guarantor the entire demurrers, which he would do to the creditor at the time of performing the obligation.

The guarantor having performed the obligation of the debtor shall not be entitled to take legal action against the debtor regarding what he has enforced, as long as the debtor has performed his obligations since the guarantor did not give notice to him regarding the performance of the obligation he has affected.

The guarantor shall, in both cases, be entitled to take legal action against the creditor and seek what he has performed for the main debtor.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the interpretation of Article 595 of the Civil Code, has reasoned as follows [*references from the decision text have been omitted*]:

> The Ratio Legis behind this provision is that the guarantor fulfills the obligation in cases where the creditor addresses them by notifying them that the debtor has not fulfilled the obligation according to the contract. In this case, the creditor does not initiate a lawsuit against the guarantor but informs them in another way, through a different legal action or instrument.
>
> Furthermore, the guarantor who fulfills the obligation in place of the primary debtor has the right to raise all objections against the creditor that the debtor themselves could have risen. The guarantor can also demand any compensation that the creditor owes to the debtor, even if the debtor has waived their rights or has accepted the obligation.
>
> In continuation of this reasoning, the College assesses that the surety contract begins to produce the effects provided by law from the moment it is concluded. The legal standing of the debtor and the guarantor becomes equal at the moment the obligation becomes due. At this point, as a rule, the creditor may address either the debtor or the guarantor unless the parties have agreed otherwise in the surety contract.

Article 596

The debtor having performed the obligation shall forthwith give notice to the guarantor. Otherwise, the guarantor having enforced the obligation of the debtor does not forfeit his right to seek from the debtor what he has performed for him. The debtor shall, in such a case, be bound to perform his obligation for the second time, however, he shall be entitled to take legal action against creditor for all what he has benefited unjustly.

Lapse of surety

Article 597

Surety shall lapse with the lapse of the main obligation.

Article 598

The guarantor shall be relieved of his liability as long as the creditor has

relinquished his privileges, lien or mortgage securing the credit and, due to this ground, the guarantor cannot be subrogated to his position regarding these rights.

Article 599

Upon the creditor accepting voluntarily any property items or any other assets against the performance of the main obligation, the guarantor shall be relieved of his liability even if an instance of foreclosure emerges to the creditor.

Article 600

The surety shall lapse if the creditor fails to take legal action against the guarantor within six months of the date of expiry of the time period for performing the obligation.

The time period for performing the obligation not having been set out either in the surety contract nor in any other agreement, the surety shall lapse with the expiry of one year since the date of entering into the surety contract.

The Civil College of the Supreme Court, in the unifying decision no. 00-2023-441, dated 2.3.2023, regarding the legal concept of the termination of suretyship, has reasoned as follows [references from the decision text have been removed]:

> The key issue under discussion by the Chamber is whether the term "lawsuit" for the purposes of Article 600 of the Civil Code should be understood strictly as a statement of claim that initiates a contentious civil judicial process or more broadly as the creditor's claim against the guarantor for non-fulfillment of the obligation, regardless of how this claim is articulated, including a request for the initiation of compulsory enforcement.
>
> [...] Suretyship should not, a priori, be more difficult to enforce than the principal obligation itself, which it is legally intended to guarantee.
>
> [...] Article 600 of the Civil Code does not define a lawsuit (padi) as a statement of claim in the procedural sense (i.e., a tool for initiating court proceedings) but rather in the substantive sense, meaning the legally recognized possibility of addressing the court to ensure the enforcement of rights and legitimate interests.

The right to petition the court through a request for compulsory enforcement falls within the material concept of a lawsuit since the purpose of such a legal tool is to fulfill a right and legitimate interest - namely, the creditor's right to seek fulfillment of the obligation from the guarantor.

Only when the suretyship constitutes an executive title does a request for an execution order equate to a lawsuit under Article 600. In cases where the suretyship does not constitute an executive title, the creditor may use Article 600 to file a substantive claim against the guarantor, respecting the deadlines established by this provision.

[...] The six-month (6-month) deadline specified in Article 600 of the Civil Code relates to the expiration of the right to use the procedural tool (i.e., the lawsuit) for enforcing the right, rather than the loss of the subjective right itself. As such, this is a prescription limit and not a preclusive term.

[…]

[…] The contract of suretyship is a consensual contract, meaning that it becomes effective upon signing and completion in accordance with the law. However, the guarantor's joint responsibility towards the creditor, alongside the principal debtor, depends on the fulfillment of a suspensive condition, meaning the maturity of the obligation or the default of the principal debtor. This is also the moment when the prescription periods stipulated in the two paragraphs of Article 600 of the Civil Code begin to run.

CHAPTER VI
DOWNPAYMENT AND PRIVILEGES

A. DOWN PAYMENT

Contents

Article 601

Down payment is the pecuniary amount that one of the parties gives to the other on the account of which shall be paid under the contract, to

the effect of establishing the conclusion of the contract and ensuring its enforcement.

Legal effects

Article 602

Where the contract is not enforced due to the culpable conduct of the party having made the down payment, the same party shall forfeit the down payment; where the contract is not enforced due to the culpable conduct of the party having received the down payment, the same party shall be obliged to pay back the double amount of down payment. The party being culpable for the nonenforcement of the contract shall obliged to indemnify the other party, calculating within this indemnification also the downpayment amount, unless the contract has provided for differently.

B. Preferences (Privileges)

Article 603

Preference is an entitlement granted by law taking account of the credit basis. The credits being assigned as preferred shall prevail over all other credits.

In the event of many preferred credits, the priority in enforcement is set out by law, according to the type of preference.

Article 604

The credits being of the same preference shall compete among each other proportionally in terms of the amount of each credit.

Ranking of preference

Article 605

(Amended by Law no. 8536, dated 18/10/1999; amended by Law no. 113/2016, dated 03.11.2016)

Paid by way of preference, referring to their ranking, the following credits:

a) credits emerging out of the financial transactions being insured by encumbrance concerning the purchase price of a specific asset;

b) credits emerging out of the salaries in employment or service relations and alimonies, however, no longer than 12 months;

c) credits of social insurance regarding the unpaid contributions along with the interests, as well as credits of employees regarding the damages sustained due to the failure of the employer to pay the above mentioned contributions;

ç) credits emerging out of the remunerations due to death or health impairment;

d) credits of authors or their heirs concerning the remunerations emerging out the full or partial alienation of their rights in the intellectual field concerning the obligations emerging during the two recent years;

dh) state credits emerging out of the liabilities to the budget and the credits of the state insurance institute for the mandatory insurance, set out by law;

e) credits emerging out of financial transactions, insured by encumbrance, under the criteria set out by law;

ë) credits, emerging from wages in employment or service relationships and maintenance obligations beyond the limit set in letter "b" of this article;

f) mediation remuneration emerging out of the agency contract, where it emerges during the last year of remuneration;

g) credits secured by mortgage or lien not amounting to encumbrance; according to law, from the value of the things in mortgage or lien.

gj) credits emerging out of the judicial proceedings expenses for preserving the asset and those for the executive arrangements, undertaken to the joint benefit of creditors, out of the proceeds of the sales of assets;

h) credits granted by banks not falling under letter 'e' and the credits emerging out of voluntary insurances;

i) credits for supplying seeds, fertilizers, insecticides, water for irrigation and for the works for cultivating and harvesting the agricultural products, on the annual agricultural products (yields), where for the credits have been applied.

Upon the existence of many credits under letter 'a' and 'e' of this Article, the preference ranking shall be determined under the criteria set out by specific law. Where the specific law does not provide to a credit preference ranking above letter 'e', the credit under letter 'a' shall be assigned a

preference under letter 'e'.

Exempt from the preference ranking under this article shall be the credits under letter 'e' having been currently granted, which shall be assigned a higher preference than letter 'dh', in the following cases:

- credit under letter 'e' was registered under the law, while the credit under letter 'dh' was not registered;
- credit under letter 'e' was registered under the law, prior to the registration of the credit under letter 'dh'.

The order of preference, provided in this article, does not apply to the procedure of bankruptcy, as provided by special law.

Article 606

The creditor may withhold the asset being subject to the privilege until he is reimbursed for his credit and he may sell it under the rules set out for selling the pledge.

Contesting the legal transactions of the debtor

Article 607
(*Amended by Law no. 113/2016, dated 03.11.2016*)

The creditor is entitled to seek declaring the legal transactions performed by the debtor to the effect of reducing the quantity or value of the property to the detriment of the creditor invalid, provided that the credit has emerged prior to the legal transactions being performed.

Where the legal transactions have been carried out against reimbursement, the person that the debtor has performed this transaction with shall have to know the intention of the debtor to cause damage. However, where this person is a spouse, parent, grandfather, child, grandchild, brother or sister of the debtor, the knowledge on the impairment intention shall be presumed, as long as the opposite is not established.

Upon the legal transaction being declared invalid, the rights benefitted by third persons by way of reimbursement in good faith prior to filing the lawsuit for declaring the invalidity of the legal transaction shall not be impaired.

This article does not apply to the procedure of bankruptcy, as provided by special law.

TITLE IV
LIABILITY IN TORTS

CHAPTER I
GENERAL PROVISIONS

Tort liability

Article 608

The person culpably and illegally causing damage to another in person or in rem shall be obliged to indemnify the caused damage.

The person having caused the damage shall not be liable upon proving that he is not culpable.

The damage shall be illegal where ever it emerges out of the breach of impairment of the interests of rights of others, being protected by the legal order or good customs.

The Joint Colleges of the Supreme Court, in the unifying decision no. 12, dated 14.09.2007, addressed aspects of the interpretation of Article 608 of the Civil Code, reasoning as follows:

> [...] Essentially, with the provision of Article 608 of the Civil Code and Article 18 of Decree no. 295, dated 15.09.1992, the legislator foresees protection against the illegal act of a third party in relation to human rights, particularly the subjective rights (both absolute and relative) of personality and property (real rights), such as the right to life, health, personality, dignity, family, private life, property, etc. In case of violation of these rights by an illegal act, the injured party has the relative subjective right to claim compensation for non-contractual damages.
>
> [...] In support of Articles 608 and 643/a of the Civil Code, the surviving family members, in a close and lasting relationship with the deceased minor who lost their life due to an illegal act, have the right to claim compensation for the financial damage suffered in the form of lost profits. This loss is seen as an inability to benefit from the normal course of life, the solidarity, and reciprocal support from the deceased minor, not only in terms of care in general but also as economic support for the family in the future.

> The fact that, at the time of the minor's death, the parents and other family members may or may not have sufficient income for food and living expenses does not affect their legal standing to claim compensation for damages.

Article 609

The damage shall be direct and immediate consequence of the action or omission of the person.

Failure to avoid an occurrence by a person being legally obliged to avoid it shall render him liable in torts.

The Joint Colleges of the Supreme Court, in the unifying decision no. 12, dated 14.09.2007, addressed aspects of the interpretation of Article 609 of the Civil Code, reasoning as follows:

> [...] In the application of Article 609 of the Civil Code for the acceptance of non-contractual civil liability, it must be established that there is a causal link between the illegal act (or omission) committed with fault and the damage caused. Furthermore, in determining the specific damages (violations) arising from this illegal act and determining the corresponding compensation, the legal causal link between the damage and the illegal act must also be established.

Article 610

The agreement excluding or restricting in advance the liability of the person having culpably caused damage shall be invalid.

Article 611

The person causing damage to another due to his own necessary protection or of a third person shall not be held liable.

Article 612

The person having caused the damage while being forced by the need to rescue himself or others against an imminent danger of a severe damage, which danger was not caused and could not be avoided by him, shall be obliged to indemnify the damage. The court may, by way of taking account of the specific circumstances of the case, relieve this person in part or in full from the obligation to indemnify the damage.

Torts by minors or persons without capacity to act

Article 613

The minor not having reached the age of fourteen and other persons being fully incapacitated to act shall not be held liable in torts.

The parents, custodians and those being entrusted with or warding persons incapacitated to act shall be liable for the damage incurred due to the illegal conduct of children under fourteen, of persons under their custody and those overseen by and living with them, but being incapacitated to act, unless they prove that they could not manage to avoid the occurrence of the damage.

Article 614

The minor having reached the age of fourteen shall be liable in torts.

The parents or custody shall be liable for the above damage, as long as the minor does not generate income out of his own occupation or does not possess property, unless they prove that they could not manage to avoid the occurrence of damage.

Damage by persons under ward

Article 615

The teachers and other persons warding minors or the persons teaching others a handcraft or profession shall be liable for the illegal damage caused to others by the students or persons warded by them, or by the persons being trained in this handicraft or profession with them, incurred during the time period they were directly warded by them, unless they prove that they could not manage to avoid the occurrence of damage.

Article 616

Liable for the damage shall be also the person having incurred it while, at the same moment, he was not conscious of his conduct.

The court may reduce the amount of indemnification, taking account of the age, degree of awareness for the committed acts, as well as the economic situation of the parties, except when he has culpably brought himself to this situation.

Fraudulent or inaccurate publications

Article 617

Upon being established that a person is liable towards another person because he has published inaccurate, incomplete or fraudulent data, the court shall, upon the request of the impaired person, force the other person to publish a repudiation, in the way it would deem appropriate.

The court may rule the publication of this repudiation even upon being established that the publication of the data is not illegal and carried out culpably, since the author was not aware about the inaccurate or incomplete character of these data.

Liability of employer

Article 618

The employer shall be liable for the damages caused to third parties due to the guilt of employees being in his service, in the course of performing the tasks assigned to them by him.

The legal entity shall be liable for the damages caused by his structural bodies in the course of performing their tasks.

Article 619

Where a person is carrying out an activity in the framework of the task of another and sticking to the latter's instructions, not being his employee, shall be liable for the damage caused to third parties in the course of this activity.

The other person is also liable to the third party.

Liable of representative

Article 620

Where the activity of the representative in the course of assuming the powers assigned to him incurs culpable liability to a third party, the represented person shall also be liable to this third party.

Liability due to the use of animals

Article 621

The owner of an animal or the one using it shall be liable to the damage

caused by it, unless he proves that he had controlled the conduct of the animal having caused the damage and could not manage to avoid it.

Liability due to carrying out a hazardous activity

Article 622

The person carrying out a hazardous activity, regarding its very nature or the nature of items applied, and causing damage to third parties, shall be obliged to indemnify the damage, unless he establishes that he has made use of all the appropriate and necessary arrangements for avoiding the damage.

Article 623

The owner of a building or construction shall be liable for the damages caused due to the deficiencies and any other flaw in connection with the building or maintenance.

The owner of the building or construction shall be entitled to seek the indemnification of the damage sustained from the persons liable to him.

Liability for the environment

Article 624

The person having culpably affected the environment by way of deteriorating, changing or impairing it, in full or in part, shall be obliged to indemnify the sustained damage.

Article 625

(Amended by Law no. 17/2012, dated 16/02/2012)

The person sustaining a non-pecuniary damage shall be entitled to indemnification upon:

a) sustaining a health, physical or psychical integrity damage;

b) his honor, personality or reputation being impaired;

c) his right to his name being impaired;

ç) his privacy observation being impaired;

d) the remembrance of a deceased person being impaired. The spouse or the relatives of the deceased up to the second degree may seek the indemnification of the non- pecuniary damage.

The Joint Colleges of the Supreme Court in the unifying decision no. 12, dated 14.09.2007, have addressed aspects of the interpretation of Article 625 of the Civil Code, specifically in the context of accidents involving motor vehicles, which are governed by the provisions of both the special laws and the Civil Code. The Joint Colleges of the Supreme Court have raised the following issues for resolution:

1. In the case of a traffic accident where the injured party is a minor with no other dependents, does the compensation for the damages include the expenses for the maintenance and livelihood of their family members, considering the wording of Article 643, letter "a" of the Civil Code?
2. Do the family members of the victims benefit from compensation for non-pecuniary damages as defined by Article 625 of the Civil Code, in relation to Decree No. 295, dated 15.09.1992, and Article 44 of the Constitution?
3. What constitutes non-pecuniary damage, and what are the criteria for its determination in such cases, also referring to the legislation in the field of motor vehicle insurance?

The following are some key reasoning excerpts from the reasoning part of the unifying decision of the Joint Colleges of the Supreme Court, which interprets important elements related to the application of various provisions of the Civil Code, particularly Article 625. Specifically, the Joint Colleges of the Supreme Court reasoned as follows:

> [...] Non-pecuniary damage, as stipulated in Article 625 of the Civil Code, is a broad and inclusive category of non-contractual damages, covering any type of harm suffered from the infringement of non-patrimonial rights and interests that belong to human values and cannot be directly valued economically in the market. Essentially, this provision recognizes the right to compensation for any form of non-patrimonial damage suffered due to an unlawful act, which is "distinct from patrimonial damage." The listing of "cases" of non-patrimonial damage in paragraphs "a" and "b" does not aim to limit, but to regulate explicitly, for the sake of distinguishing infringements, the right to appropriate compensation and the scope of subjects entitled to active legitimacy.
>
> [...] Health damage (biological damage) essentially constitutes the infringement of the right to health, to the physical and/or psychological integrity of the individual.

This non-patrimonial damage, as defined by letter "a" of Article 625 of the Civil Code, is the subject of a claim for compensation independent of other patrimonial or non-patrimonial damages suffered by the injured party due to the same unlawful act.

[...] Since life and health have no price, and in compliance with the fundamental constitutional principle of equality before the law and the prohibition of discrimination under Article 18 of the Constitution, the court must ensure uniform judgment and equal evaluation of the degree and extent of compensation for biological damage for each specific form and level of permanent or temporary impairment to the physical or psychological integrity of the injured party, as long as the age is the same and the type of health damage (whether physical or psychological) is the same.

[...] Compensation for health damage under Article 625/a of the Civil Code is sought independently from the claim for patrimonial damage arising from the loss or reduction of the ability to work, as stipulated by Article 641 of the Civil Code. According to this provision, the patrimonial interest affected temporarily or permanently due to health damage resulting from an unlawful act is the human right, as defined in Article 49 of the Constitution, to earn a living, and thus also to guarantee and increase wealth through lawful work chosen by the individual's free will. Additionally, it constitutes a legitimate interest that is also harmed by the depletion of the injured party's wealth in the form of expenses incurred for care and, particularly, for the treatment of health damage continuously caused by the same unlawful act.

[...] Moral damage (pretium doloris or pecunia doloris) is an internal, temporary manifestation of unjust disruption (non iure perturbatio) of the mental state of the individual, pain and mental suffering, or psychological distress resulting from an unlawful act. Anyone who suffers infringements on their health and personal integrity from unlawful acts or omissions by a third party with fault has the right to seek compensation for the moral damage suffered. This right, as the injured party, belongs individually (ius proprius) to each of the close family members of the person who has lost their life or whose health has been damaged by the unlawful act, if the specific family, emotional, and cohabitation link is proven. Moral damage suffered by close relatives is considered a consequence, a direct and immediate result of the same unlawful act.

> [...] Existential damage caused by the unlawful act of a third party infringes the personal rights of the individual by permanently damaging the expression and realization of the injured party as a person, the external manifestation of their personality, disrupting their daily life and ordinary activities, resulting in a deterioration of the quality of life due to the change and disruption of their balance, behavior, and life habits, as well as personal and family relationships. Due to this psycho-physical state, the injured party may no longer perform certain activities that positively characterized their existence or could have characterized it positively in the future, thus forcing them to resort to different life solutions than those desired and expected or to abandon such solutions due to the proven unlawful act. Existential damage, not having merely subjective or internal characteristics, is objectively verifiable.

Joint liability

Article 626

Where the damage is caused by a number of persons jointly, they shall be jointly liable to the impaired person.

Action for recourse

Article 627

The person having indemnified the damage shall be entitled to seek from everyone having caused the damage their respective share proportional to the degree of guilt of everyone and the entirety of the ensuing consequences. Where this cannot be defined, it is assumed that the degree of guilt is equal.

The parents or custodians having defrayed the damages caused by the minors or persons having been deprived of their capacity to act shall not be entitled to seek from the latter the recovery of the damages they have defrayed.

CHAPTER II
LIABILITY STEMMING FROM THE PRODUCTS

A. PRODUCER LIABILITY

Article 628

The producer shall be liable for the damage being caused due to the defects of his products, unless:

a) the producer has not put the products in the market;

b) referring to the established circumstances, it is deemed that the defects having caused the damage could not exist at the time of putting the product in the market, or they have emerged later;

c) the product has not been designated for sale or any other form of distribution, for a certain commercial purpose of the producer, neither produced or distributed in the context of a undertaking or professional activity;

d) the defects relate to the fact that the product has been in compliance with the rules set out by the public bodies;

e) the scientific or technical knowledge did not manage to detect the defects at the time of putting the product in the market;

ë) it is about the production of raw material or manufacturing a constituent part of a product, which turn put flawed within the composition of the product, or as a consequence of the erroneous instructions provided by the producer of the product.

Article 629

The liability of the producer shall be reduced or lifted, where, under circumstances, the damage has been caused due to the defects of the products, as well as due to the guilt of the impaired person or of another person, whereof the impaired person is responsible.

The liability of the producer shall not be reduced as long as the damage is a consequence jointly of the defects of the product and conduct of a third party.

Article 630

A property item is defective as long as it does not provide the assurance expected thereof, taking account of the circumstances jointly and severally:

a) appearance of the product;

b) reasonable use going with the product;

c) time of putting the product in the market.

The product cannot be said to be defective referring to the fact that a more sophisticated product has been put in the market subsequently.

Article 631

"Product" in the sense of this Code shall be any movable property item, even if it is incorporated into a movable or immovable property item, as well as electricity, excluding the agricultural products and the products emerging out of hunting.

Agricultural products shall be the land, livestock and fishing products, unless they have gone through a preliminary processing.

"Producer" in the sense of this Code shall be the producer of a manufactured product, of a raw material, or manufacturer of a constituent part of a product, as well as any other person appearing as such (manufacturer), putting his name, trademark or another distinguishing mark on the product.

Notwithstanding the liability of the producer, 'producer' shall be referred to any person importing a product intending its sale, rent, leasing, or any other distribution form, in the context of his commercial activity. His liability in such a case shall be the same as that of the producer.

Article 632

Where the producer cannot be identified, every supplier shall be a producer, unless within a reasonable time period he shows to the impaired person the identity of the producer or the person having supplied the product.

Article 633

Where, under the first paragraph of Article 628 of this Code, many persons are liable for the same damage, each of them shall be liable for the entire damage.

Article 634

The lawsuit regarding the indemnification of the damage filed against the producer under the first paragraph of Article 628 of this Code shall lapse upon the expiry of three years, starting from the day that the impaired person has been informed or should have been informed about the damage, deficiencies and identity of the producer.

The right of the impaired person against the producer regarding the indemnification of the damage under the first paragraph of Article 628 of this code shall forfeit upon the expiry of ten years, since the day that the producer has put the product having caused the damage in the market.

B. FRAUDULENT PUBLICATION

Article 635

The person publishing or makes arrangements for making a notification public regarding the products or services he offers himself in the event of a professional activity or of an enterprise or of a person on whose behalf he is acting carries out an illegal conduct as long as the notification is fraudulent in one or some of the following respects:

a) nature, composition, quantity, quality, characteristics or eventual uses;

b) origin, fashion or date of production;

c) size of its stock production;

ç) price or method of calculation;

d) reason or purpose of special offers;

dh) qualities assigned, other certificates or evaluations made by third parties, or declarations issued by them, applied professional or scientific terminology, electronic or statistical data;

e) circumstances of circulating the products, providing services or making of payment;

f) extension, contents and duration of guarantee;

g) identity, qualities, powers or competences of the one manufacturing

or having manufactured the products, offering them to the one providing the service, managing, supervising or assisting these activities;

gj) compares to other products and services.

Article 636

The person having conducted himself illegally according to the above provision is responsible for the caused damage, unless he establishes that he is not culpably involved with its emergence.

Article 637

Where the fraudulent publication, being provided for in **Article** 635 of this Code, has caused or endangers causing a damage to a person, the court shall, upon his request, order its immediate ban and the obligation of the liable person for making a public impugnment, in the fashion that the court finds it appropriate.

C. UNFAIR COMPETITION

Article 638

Pursuant to the provisions connected to the protection of the trademarks and patent rights, the unfair competition conduct is affected by everyone:

1. making use of the names or trademarks which might be mixed up with the names or trademarks used legitimately by others or imitate the products of a competitor or affects conduct which may cause them appear like the products and the activity of a competitor.

2. considering the qualities of the products or enterprises of a competitor like his own.

3. making use directly or indirectly of any other means which does not coincide with the principles of professional fairness and may impair the activity of others.

Article 639

The decision establishing the conduct of unfair competition shall prohibit their duration and set out the necessary measures to the effect of eliminating the consequences.

Where this conduct has been affected culpably, the person having done this shall indemnify the damage.

CHAPTER III
INDEMNITY

Article 640

The property damage being indemnified shall consist of the incurred damage and the lost profit.

Indemnified shall also be the expenses incurred reasonably to avoid or to diminish the damage, those being necessary for setting out the liability and the damages, as well as the reasonable expenses incurred to ensure indemnification in extra-judicial proceedings.

Article 641

The person having inflicted harm to the health of another person shall be obliged to indemnify the damage, taking account of the loss or restriction of the ability of the impaired person to work, expenses having been made for his medication, as well as other expenditure bearing a connection to the incurred damage.

Article 642

The extent of damages may change in the future, depending on the improvement or worsening of the health or improving or aggravation of the ability of the impaired person to work, as compared to the time of setting out the indemnity and the changes, which the salary of the impaired person might have gone through.

Article 643

Upon the death of a person being caused, the damages due to be indemnified shall consist of:

a) living expenses of the minor children, spouse and parents being incapable to work, having been dependants of the deceased, in full or in part, as well as of the persons having lived with the family of the deceased and being entitled to the right of alimony from him;

b) appropriate expenses for the internment of the deceased, to the extent that they are proportional to the personal and family circumstances of the deceased.

The person having inflicted the damage may make use of the same legal remedies that the he could have applied to the deceased.

The court may, taking account of the entire circumstances of the case, decide for the indemnity to be granted in kind, in pecuniary means or in instalments.

Article 644

Where the person having affected the illegal act or omission has had, along with the incurred damage, an evident benefit, the court may, upon the request of the impaired party and taking account of the nature of the damage, the degree of guilt as well as other circumstances of the case, calculate into the damages also this benefit, in full or in part.

Article 645

Upon the death or harm to the health of a person benefiting social insurance being caused, the damages shall be indemnified in the fashion set out by law.

Article 646

The extent of damages stemming from the death or harm to the health of a person not having been in employment or insurance relations, shall be set out by the court, based on the salary that an employee of that category is obtaining, wherewith the work done or which might have been done by the impaired person is equates.

Article 647

Upon the impaired minor reaching the age of 16 and receiving no salary out of his employment, the same shall be entitled to seek indemnification in connection with his loss of ability to work referring to the average salary of an employee, under the criteria of Article 646 of this Code, instead of the allowance he is receiving for his living.

Upon reaching the age of eighteen years, he shall be entitled to seek, instead of the allowance he is receiving, to be indemnified referring to the average salary of an employee of the category that he would obtain or should have obtained, in the event the harm to the health had not occurred.

Article 647/a
Ways and criteria of setting out civil liability and extent of non-property damage
(Added by Law no. 17/2012, dated 16/02/2012)

The indemnification of the non-property damage in connection with the impairment of the honour, personality or reputation of a person aims at reinstating the impaired right, proportional to the incurred damage, and it shall be set out based on the circumstances of the case. In connection with setting out the civil liability and the extent of non-property damage, the court shall take account of:

a) way, form or time of distribution of the statements or commission of actions;

b) degree of abiding by the rules of the professional ethics by the perpetrator of the statements;

c) forms and degree of guilt;

ç) the fact whether the statements have been quoted or referred accurately to the statements of a third person;

d) the fact whether the statements are false, specifically in the event of impairing reputation;

dh) the fact whether the statements pertain to the privacy issues of the impaired person and their relationship to the public interest;

e) the fact whether the statements consist in opinions or assertions containing only insignificant factual inaccuracies;

ë) the fact whether the statements are hear a connection to the public interest or persons in state offices or being candidates in elections;

f) conduct of actions to prevent or reduce the extent of damage, such as expressing a dementia for the false statements, as well as any other measure applied by the perpetrator of the statements to the effect of reinstatement of the honor, personality and reputation of the impaired person;

g) the fact whether the perpetrator of the false statements has benefitted due to their dissemination, as well as the extent of this benefit;

gj) the fact whether the indemnification aggravates the financial situation of the perpetrator of the damage significantly.

TITLE V
AGENCY OF NECESSITY

Article 648

The person, despite being under no obligation, consciously and for a reasonable purpose undertaking to attend to the affairs or interests of others shall be obliged to continue this until the interested person becomes able to attend to on his own.

Article 649

The interested person shall perform the obligations that the agent of necessity has assumed on the behalf of the former, exempt the agent of necessity from the obligations he has assumed on his own behalf and reimburse him for the necessary and useful expenses since the day they have been incurred and, as appropriate, reimburse him for the damage that he might have sustained as a consequence of the agency, provided that the actions performed by the agent should not have been banned by the interested person.

Where the agent of necessity was, in addition to attending to the affairs, in need of practicing a profession to this effect, he shall be entitled to reimbursement in compliance with the prices and fees set for such activities.

Article 650

The agent of necessity shall be entitled to perform legal transactions on behalf of the interested person, to the extent that the interest of the latter is met in the most appropriate way.

Article 651

The agent of necessity shall be subject to the same obligations stemming from an order contract.

The court may, by way of taking account of the circumstances having had an impact on the agent of necessity to undertake agency by necessity, reduce the damages in connection with the damage, which has been culpably incurred by him.

Article 652

The interested person may, by way of consenting to the activity of the agent of necessity, withdraw his right to seek damages from the agent of necessity under the above provision. The interested person shall, to this effect, be granted a reasonable time.

TITLE VI
UNWARRANTED PAYMENT

Article 653

Anyone having made an unwarranted payment shall be entitled to seek the restitution of what he has paid, as well as to enjoy the yields and interests accruing as of the date of payment, if the person having benefited the payment is in bad faith, and as of the restitution request, if that person is in good faith.

Article 654

The person having paid for the obligation of another by way of believing that he is a debtor, due to being in error and without guilt, may get what he already paid restituted, provided that the creditor has not been deprived of the credit title and guarantees in good faith.

The restitution of payment shall be associated with the yields and interests, under the conditions provided for in the above provisions.

TITLE VII
UNJUST ENRICHMENT

Article 655

The person having benefited or saved something in absence of legal grounds and to the detriment of another shall be obliged to reimburse the latter in connection with the property- related losses he has sustained, within the limits of enrichment.

Article 656

Where the unjust enrichment pertains to a certain property article, the person having obtained it should restitute it in kind, along with the income currently or supposed to have yielded, and he shall be entitled to seek the reimbursement of expenses he has made, under the provisions regulating seeking the property article from the illegal possessor.

Article 657

All what a person has given voluntarily for the purposes of performing an obligation, which, despite not being reclaimable, is not invalid, cannot be sought back.

Article 658

The lawsuit in connection with the unjust enrichment cannot be filed, as long as the impaired person can file another type of lawsuit for seeking the indemnification of the sustained damage.

PART V
CONTRACTS

TITLE I
CONTRACTS IN GENERAL

CHAPTER I
PRELIMINARY PROVISIONS

Contents of contract

Article 659

The contract is a legal transaction by way thereof one or more parties create, change or end legal relationships.

Article 660

The parties to the contract dispose freely of its contents, within the limits set out by the legislation in effect.

Contracts of unilateral and bilateral obligations

Article 661

The contract is of unilateral obligations, as long as one party assumes obligations towards the other party, while the latter having no obligations to the former.

Article 662

The contract is of bilateral obligations, as long as the parties mutually assume obligations to each other.

Necessary conditions for concluding and validity of the contract

Article 663

The conditions necessary for the existence of a contract are: consent of a party assuming the obligation, legal grounds whereon the obligation is building, scope making up the contents of the contract and its form required by law.

Conclusion of contract

Article 664

Where the contract contains just the obligation of the bidder, the recipient may refuse the proposal within a specified time period or emerging from the nature of the agreement. In absence of such a refusal, the contract shall be deemed concluded.

Article 665

The person proposing the conclusion of the contract shall be bound by the proposal, unless this relationship is excluded. Where the proposal is rejected or it is not admitted within the specified period, it shall be considered to be rejected.

Where no such time period has been set out, the bidder shall be bound by the proposal as long as it is necessary to receive the answer of the other party, normally or under the circumstances.

Article 666

The proposal made to a person being present to conclude a contract, whereby falling short of setting out a deadline for the acceptance, shall

lapse, as long as the person being present does not accept the proposal immediately.

Article 667

Upon the proposing party setting out a deadline for the acceptance, it is necessary for the response to be received within by the deadline.

The proposing party may consider the delayed acceptance valid, however, he shall forthwith notify the other party.

Upon the acceptance being sent in time, however, being received by the proposing beyond the deadline and the latter not wanting to be bound by it, he shall notify the accepting party instantly.

Article 668

The proposal to conclude a contract shall lapse as long as the proposing party notifies the other party that he has withdrawn it, prior to the proposal being received.

This rule is valid also for the withdrawal of the acceptance by the other party.

Article 669

Where upon the request of the proposing party, or taking account of the nature of the agreement and the circumstances bearing a connection to it, it emerges that it was not necessary to wait for the confirmed acceptance of the proposal, or the obligation would be performed regardless of whether a preliminary response was received, the contract shall be considered to be concluded at the time and venue where its implementation has started.

The party performing the obligation shall notify the other party forthwith about the institution of the enforcement of the contract, otherwise he shall be bound to indemnify the damage.

Article 670

The acceptance of the proposal not matching its contents shall be considered a non-acceptance and simultaneously a new proposal.

Article 671

The bid shall be considered as a proposal where it contains the essential elements of the contract being sought to be concluded, unless it emerges differently out of the circumstances of the case.

Article 672

The contracting party may abandon the contract within seven days since its conclusion, not indicating any grounds, where:

- the contract has been concluded at the work station or residence of one party, in the course of an excursion organised in public premises, or under such circumstances not accommodating a normal situation of negotiations;
- the seller shall, in the contract with the scope granting a credit for purchasing consumption items, notify the purchaser in writing about the right to abandon the contract entered into under the above circumstances, or the time period for abandoning it shall be one year.

Article 673

An enterprise assuming a dominant position in the market shall be bound to contract with anyone seeking an obligation, falling under the scope of its activity, in compliance with the laws and good commercial customs.

The conclusion of a contract cannot be denied in absence of legitimate grounds.

Article 674

The parties shall, in the course of negotiations for drafting the contract, conduct themselves in good faith to each-other.

The party knowing or who should have known the grounds for the invalidity of the contract and falling short of disclosing it to the other party shall be bound to pay the damages being sustained by the latter due to the fact that it innocently relied on the validity of the contract

Article 675

Where a contracting party disposes of professional knowledge and the other party induces full trust with them, the former shall be bound to the latter information and instructions in good faith.

Article 676

The contract shall be considered to be concluded where the parties have mutually expressed their will, agreeing on all its essential conditions.

The expression of the will may be explicit or implicit.

Unlawful grounds

Article 677

The legal grounds of a contract shall be unlawful where they are at variance with the law, public order or where the contract becomes an instrument to avoid the implementation of a norm.

Scope of contract

Article 678

The scope of the contract shall be possible, lawful, defined or definable.

Article 679

The contract being concluded upon a suspending condition or connected to a deadline shall be valid as long as the obligation, being initially not possible, becomes possible prior to the condition being met or deadline expiring.

Article 680

The contract may provide for the accomplishment of transactions over property items in the future, unless explicitly prohibited by law.

CHAPTER II
INTERPRETATION OF CONTRACT

Article 681

While interpreting a contract, there needs to be explained which was the real and joint intention of the parties, while not focusing on the literal meaning of the words, and assessing their conduct in general, prior to and following the conclusion of the contract.

Article 682

The conditions of the contract shall be interpreted in their relationships, while assigning to each of them the meaning stemming from the entirety of the act.

The contract shall be interpreted by the parties in good faith.

Article 683

In a situation of suspicion, the contract and its conditions shall be interpreted in the meaning which might yield any effects and not in the one having no effects at all.

Article 684

The conditions of the contract which may be considered to have two meanings shall be interpreted taking account of the place where the contract has been concluded.

Where one of the parties is an entrepreneur, the conditions with two meanings shall be interpreted taking account of the practice of the place where the seat of the enterprise is located.

Article 685

The words and phrases, which may have two meanings, shall be considered to have be meaning being most appropriate to the nature of contract.

General Conditions

Article 686

The general conditions of the contract being drafted by one contracting party shall have effect towards the other party, as long as the latter has acknowledged them or should have acknowledged at the moment of concluding the contract, by way of demonstrating a normal care.

Invalid shall be the general conditions of the contract incurring a disproportionate loss or damage of the interests of the contracting party, specifically where they essentially diverge from the principles of equality and impartiality spelled out in the provisions of this Code regulating the contractual relationships.

The conditions providing for to the benefit of the party having drafted them in advance, shall yield no legal effects, limitations to liability, possibility to abandon the contract, to suspend its implementation or set out expiry deadlines to the other party or restrictions to the right to file a defense, to the contractual freedom in relations with third parties, arbitration conditions or circumventing the powers of the judicial authorities, unless they have been specifically approved in writing by the other party.

Article 687

With regard to contracts being concluded by way of signing up to the modules or forms aiming at streamlining certain contractual relations uniformly, the conditions added up to these modules or forms shall have a priority to the initial conditions of the modules or forms referred to above, as long as they do not comply with them, although they have not been repealed.

Article 688

The conditions being inserted into the general conditions of the contract or in modules or forms, being handed out by one of the contracting parties shall, in a situation of doubt, be always interpreted to the benefit of the other party.

Article 689

Where the contract remains clear, despite the application of the norms contained in this chapter, it shall be considered to be at the less aggravated meaning for the debtor, as long as it is free of charge, and in the meaning being instrumental to meeting the interests of parties impartially, as long as it is subject to charge.

CHAPTER III
EFFECTS OF CONTRACTS

Article 690

The normally concluded contract shall have the effect of the law on the parties. It can be terminated or amended subject to the mutual consent of the parties or due to causes provided for by law.

Article 691

The contract shall be of effect to the third parties in the events provided for by law.

Article 692

The legal effects of the contract shall extend over to the heirs with universal title, unless the contract provides for differently.

Article 693

The contract binds the parties not only with regard of its contents, but also to all the consequences stemming from the implementation of the law.

Contract to the benefit of a third party

Article 694

The contract to the benefit of a third party shall be valid where the person concluding it is interested therein.

The person having accepted the promise to the benefit of the third party or the latter, or other persons assuming the latter's rights shall be entitled to seek the enforcement of the contract, unless another agreement exists.

The contract cannot be terminated or amended next to the moment that the third party has declared their consent to benefit out of the conclusion of the contract, unless the proposing party has made a reservation of this right.

In the event of the revocation of the conclusion of the contract, or refusal of the third party to benefit thereof, the obligation shall remain to the benefit of the proposing party, unless it emerges differently from the will of parties or nature of contract.

The Joint Colleges of the Supreme Court in the unifying decision no. 932, dated 22.06.2000, reasoned regarding a contract for the benefit of a third party, where they determined that:

> [...] In such a contract, the third party can only be a beneficiary without compensation (beneficiary) and, as such, does not bear any potential risk. [...] A contract cannot make a third person a debtor or creditor without their consent.

Article 695

The party having made the promise to the benefit of a third party may recourse to remedies towards them stemming from the contract, however not those stemming from the relations with the other party.

Right to abandon the contract

Article 696

Where the right to abandon the contract has been granted to one of the

parties, this right may be assumed for as long as the contract has not started to be implemented.

With regard to the contract of continuous or periodic performance, this right may be assumed even beyond this limit, however, this shall not have any impact on the completed or pending performance. Where the payment of an indemnity has been provided for in the contract for the withdrawal, it shall enter into effect upon the payment being made, unless a different agreement exists.

Promise for performing an obligation

Article 697

The person having promised to another that a third person shall perform an obligation or shall accomplish a transaction to his benefit, shall be obliged to indemnify the other party, as long as the third person does not consent to perform the obligation or accomplish the promised transaction.

Termination of contract

Article 698

In the event of contracts with mutual obligations, where one of the contracting parties does not meet his own obligations, the other contracting party may, as appropriate, seek the performance of the obligation or termination of the contract in addition to the indemnification.

Article 699

The contract cannot be terminated, as long as the failure of one of the parties to perform the obligation is of insignificant importance for the interests of the other party.

Article 700

The contracting party may give notice to the other party having failed to perform the obligation to perform it within an appropriate deadline, declaring that upon the failure to enforce the contract within this deadline, it shall be definitely considered to be terminated.

Article 701

Where the deadline set out for the performance of the obligation by one of the parties is considered to be essential for the interest of the other party, the latter shall, if they wish to seek the performance despite the

expiry of the deadline, give notice to the other party within three days, unless a different agreement exists.

Article 702

The parties may provide for in the contract to have it terminated as long as a certain obligation is not performed under the foreseen conditions.

The contract shall, in such a situation, be terminated, as long as the interested party declares to the other party that it is going to recourse to the pertinent condition for terminating the contract.

Article 703

The termination of the contract due to the failure to perform the obligations shall have retroactive effect between the parties, except the contracts of continuous or periodic enforcement, whereof the termination effect shall not extend over the previously accomplished transactions.

The termination of the contract, be it even by way of the mutual consent of parties, does not affect the rights obtained by third parties, except the effects of registering the request for terminating the contract.

Article 704

The provisions of the general part of the obligations shall apply for the purposes of terminating the contract, in addition to the provisions regulating the special contracts.

TITLE II
SPECIAL CONTRACTS

CHAPTER I
SALE

GENERAL PROVISIONS

Article 705

The scope of the sale contract is the transfer of ownership over a property

item or the transfer of a title against the payment of a price.

Article 706

The acquisition of ownership in the event of a sale, the scope whereof is the acquisition of a property item or title in the future, shall occur as soon as the property item or title are accepted to exist.

Except where the parties wanted to conclude a contract conditional on a suspending ground, the sale shall be ineffective as long as the property item is not accepted to exist.

Article 707

Where the parties have set no price and they did not agree on a way to set it, it shall, in absence of any act of public competent authorities, be assumed that the parties intended to refer to the price applied normally by the seller at the time of concluding the contract.

Where it is about property items having a stock exchange or market value, the price shall be set based on the market lists of the place where the delivery shall occur, or of the place being closest to it.

Where the price has been set based on the weight of property items, it shall, to the effect of avoiding any doubt, be set based on its net weight.

The party may entrust setting the price to a third party, being nominated in the contract or eventually being nominated later.

Article 708

The expenses of the sale contract and the other related expenses shall be incumbent on the purchaser, unless the agreement provides for differently.

Specific bans to purchase

Article 709

Banned to purchase directly, through a third party or in auction shall be:

a) the persons administering or guarding foreign property items based on the law or on the appointment by the state, the property items they administer or guard;

b) official persons being assigned to affect the sale by way of foreclosure, the property items that they sell;

c) judges, prosecutors, bailiffs, notaries and advocates, the property items being under scope of conflicts before the court, wherein they are involved or assume their functions, unless they are co-owners thereon.

Obligations of the seller regarding the sale of the immovable property

Article 710

The main obligations of the seller are:

1. handing the property item over to the purchaser.

2. where the acquisition of the ownership over the property item or of real rights thereon is not an immediate consequence of the contract, he shall hand over the entire pertinent documentation regarding the acquisition of the ownership thereon, under the conditions contained in the contracts or in the law.

3. guarantee the purchaser against deprivation, flaws or inconsistency concerning the qualities of the property item under the contract.

Article 711

The property items shall be delivered as they stand at the moment of concluding the contract. The property items shall be delivered along with their accessories, additional parts and yields since the day of concluding the contract, unless the parties have provided for differently in the contract.

Where the seller is not bound to deliver the property items at another specific place, he shall satisfy his obligation to surrender by way of handing the property items over to the first transporter to carry them over to the purchaser, as long as the sale contract includes the transport of property items. Where the contract does not include the transport of the property items and it refers to property items defined individually, or in type or quantity, due to be taken from a certain quantity or to be manufactured or produced, and as long as, at the moment of concluding the contract, the parties knew that the property items were situated or they had to be manufactured or produced in a certain place, the seller shall be bound to make the property items available at that place.

In other instances, the seller shall be bound to make the property items available at the purchaser at the place they were situated at the moment of sale or, where such a place cannot be defined, at the place where the seller had his residence or the seat of his activity.

Article 712

The seller shall deliver the property items:

1. on the date set out in the contract or which is determinable based on the contract.

2. at any moment of the time period being set out or being determinable under the contract, unless it emerges from the circumstances that it is incumbent on the purchaser to choose the date.

3. under any circumstances, within a reasonable deadline since concluding the contract.

Article 713

The seller being bound to issue the documents pertaining to the property items, he shall do so at the time, venue and form foreseen in the contract. Upon issuing the documents prior to this moment, he may rectify any shortcomings in them up to the moment foreseen for their issue, as long as the assumption of such a right does not inflict any distress or unreasonable expenditure to the purchaser. He shall in such instances, maintain the right to seek indemnity.

Article 714

Regarding the document-based sales, the seller shall be relieved of his obligation to hand over to the purchaser the sold property items, by way of handing over the sales and other documents set out in the contract or law.

Article 715

The seller shall deliver the property items in the quality, quantity and type set out in the contract, as well as put and wrapped up in the way set out in the contract.

The property items shall be deemed not to be in compliance with the contract as long as they are not appropriate for the specific use set out in the contract, unless a different agreement exists. Such a determination not being possible to be made, the property items shall be deemed to be inconsistent with the contract, as long as they are not appropriate to the use that property items of the same type normally are. The sale being affected based on a model or sample, the seller shall deliver property items being of the same quality as the model or sample.

The contract falling short of mentioning the rules of putting or wrapping up the property items, these property items shall be deemed to be inconsistent with the contract as long as they are not put or wrapped up in the ordinary fashion for property items of the same type or, in absence of such an ordinary fashion, in such a fashion that it is appropriate to preserve and to protect the property items.

The seller shall not be held liable for the flaws of property items, whereof, at the moment of concluding the contract, the purchaser was knowledgeable or he was not informed due to his own fault, unless the flaws affect the quality that the property items should have under the contract or referring to the notification of the seller.

Article 716

The seller shall be liable for any flaw or inconsistency, which existed at the moment of cession of risk over to the purchaser, even if the flaw appears subsequent to this moment.

The seller shall be held liable even for the inconsistency being established after the moment indicated in the above paragraph and emerging due to the failure to meet any obligation of his, including the guarantee, whereunder the property items shall, for a period of time, remain appropriate for their normal use or for any specific use, or shall maintain the quality or certain characteristics.

Article 717

The purchaser shall forfeit his right to demur regarding the flaws of the property item, as long as he does not complain with the seller, by way of specifying their nature, within ten days of the detection, unless the parties or the law has set out another deadline.

The purchaser shall, under any circumstances, forfeit his right to demur concerning the flaws of the property item, as long as he does not assume this right within two years of the date when the property items have been delivered, as long as this deadline is not at variance with the duration of a contractual guarantee.

Article 718

The rules contained in the above Article shall be of no avail to the seller, as long as the flaws pertain to facts whereof he is knowledgeable or should be knowledgeable and failing to inform thereof the purchaser.

Article 719

The seller shall deliver the property items, released of any title or claim of third parties, unless it has been foreseen differently in the contract.

Article 720

The purchaser shall inform the seller of the titles or claims of the third parties on the property item, by way of specifying their nature, within a reasonable time period of the moment he becomes knowledgeable or should become knowledgeable, otherwise he shall forfeit the rights provided for in the above Article.

The seller can also not refer to the provisions of the above paragraph, as long as he was knowledgeable of the titles or claims o the third parties, or their nature.

Article 721

The purchaser can suspend the payment of the price, as long as there is reason to fear that the property item or parts thereof may be reclaimed by third parties, unless the seller provides respective guarantees.

The payment cannot be suspended, as long as the risk was known to the purchaser at the moment of the sale.

Article 722

Where the delivery of flawed property items consists an essential failure to perform contractual obligations, the purchaser shall be entitled to seek:

1. at the moment of complaining, provided for in Article 717 of this Code or within a reasonable time period of that denunciation, the delivery of property items, being additional or replacement.

2. eliminating the flaws by way of amends, as long as this can be reasonably considered referring to the concrete circumstances. The request for amends shall be made at the moment of complaining under Article 717 or within a reasonable time period of this complaining.

3. price reduction.

4. declare termination of contract.

The purchaser may set a reasonable time period for the seller to meet these obligations. Depending on the deadline, the purchaser can avail himself of no legal remedies concerning the failure to perform, unless

being notified by the seller that the latter shall not meet the obligation within the deadline being set out.

The purchaser shall under any circumstances not forfeit his right to seek indemnity.

Article 723

The delivery of the flawed property items consisting an insignificant failure to perform the contract, the purchaser may seek:

1. eliminating or amending the flaws in delivered property items.

or

2. price reduction.

The purchaser may set for the seller a reasonable time period to meet these obligations. Depending on the deadline, the purchaser may avail of no legal remedies due to this failure to perform, unless being notified by the seller that the latter shall not perform his obligation within the deadline been set.

The seller failing to meet the requirement set out in point 1 of this Article by a deadline set out by the purchaser, the latter may seek the reduction of the price for the above property items.

The purchaser shall, under no circumstances, forfeit his right to seek indemnity.

Article 724

In addition to the termination of the contract on grounds of law as a consequence of the deadline being an essential condition in the contract, the purchaser may, as long as the delivery of the property item has not occurred, declare the contract terminated, as long as the seller does not deliver the property items within the additional deadline set by the purchaser or he declares that he shall not affect the delivery by this deadline.

Article 725

The seller having delivered the property items, the purchaser shall forfeit the right to declare the contract terminated, where:

1. in the event of a delayed delivery, the purchaser has not sought the termination of the contract within a reasonable time period, however, not

later than 15 days of his being informed that the delivery has occurred.

2. in the event of failure to perform, other than the delayed delivery, within a reasonable time period, however no longer than 15 days:

a) of his being informed or which ought to have been informed of this performance failure;

b) following the expiry of the additional time period eventually set out by him under Article 717 of this Code.

Article 726

Where the seller delivers only a part of the property items, or where only a part of delivered property items are in compliance with the contract, Articles 717, 720 shall apply with regard to the missing or non-compliant part.

The purchaser may only declare the contract entirely terminated, where the partial delivery, or being incompliant with its conditions, consists a performance failure of specific or essential significance.

Article 727

Where the purchaser has been deprived of the property item as a consequence of the titles of a third party being asserted thereon, the seller shall be obliged to indemnify under Article 744.

Where the purchaser has been deprived of the property item only partially and under such circumstances he would terminate the contract, the above paragraph shall apply.

Article 728

The purchaser, being sued by a third party claiming titles over the sold property item, shall invite the seller in proceedings. Upon failure to do so while a final decision has been rendered to his disadvantage, he shall forfeit his right of guarantee for eviction, as long as the seller establishes that sufficient grounds existed to reject the request.

The purchaser having voluntarily acknowledged the right of the third party shall forfeit his right to eviction, as long as he fails to establish that no sufficient grounds existed for hindering the acquisition of the property item.

Article 729

Where the purchaser has avoided the acquisition of the property item by

way of paying a certain amount of money, the seller may be relieved by way of reimbursing this paid amount, its interest, as well as the entire expenses.

OBLIGATIONS OF THE PURCHASER IN THE SALE OF THE MOVABLE PROPERTY

Article 730

The obligation of the purchaser to pay the price shall include making arrangements for abiding by the formal requirements of the contracts or specific provisions for making the payment.

Article 731

Where the purchaser is not bound to pay the price in another specified place, he shall pay it at the residence or official seat of the seller, or, where the payment shall occur concurrently with the delivery of the property items or documents, at the delivery place.

Article 732

Where the purchaser is not bound to pay the price at another specified moment, he shall pay it upon the seller making the property items or documents representing them available to him. Where the contract includes the transport of property items, the seller may accomplish the haulage, provided that the property items or documents representing them, be delivered to the purchaser prior to the payment of the price.

Article 733

The purchaser shall pay the price on the date being determined or determinable based on the contract or the law, notwithstanding the request of the seller.

Article 734

The obligation of the purchaser to take over shall be the accomplishment of any act expected of him reasonably to the effect of enabling the seller to do the delivery and the purchaser take over the property items.

Article 735

Where contractually provided for the purchaser to determine the form,

size or other characteristics of property items, and upon him failing to make such a determination on the specified date or within a reasonable time period of receiving the request of the seller, the latter may do this determination on his own in compliance with the requirements of the purchaser, whereof he may be knowledgeable.

Where the seller does this determination on his own, he shall notify the purchaser regarding the rules of this determination and set out a reasonable deadline within which the purchaser may make another determination. Where upon receiving this notice, the purchaser does not utilize this possibility within the deadline being set out, the determination made by the seller shall be binding.

Article 736

The seller may set out an additional reasonable deadline for the purchaser to meet his own obligations. Other than the situation where the seller did not receive any notification from the purchaser that the latter will meet his obligation within the deadline being set out during this period, the seller may not avail himself of any legal remedies for meeting the obligations. However, the seller shall not forfeit his right to seek indemnity for the delays in performance.

Article 737

The seller may declare the contract terminated:

1. upon the failure of the purchaser to perform an obligation stemming from the contract or the law consisting an incompliance of specific or essential significance.

2. upon the purchaser not meeting his own obligations to pay the price or take over the property items within the additional time period set out by the seller, or declaring that he will not do this by the deadline.

Where the purchaser has paid the price, the seller shall forfeit his right to declare the contract terminated, as long as this is not asserted:

1. in the event of a delayed performance of the obligations of the purchaser, prior to being notified on the enforcement of the obligation.

2. in the event of a different failure to perform than the delayed performance, within a reasonable time:

a) of the moment of being notified or which ought to have been notified of such a failure to perform;

b) following the expiry of the additional deadline being set out by him, or following the purchaser declaring that he will not meet his own obligations within this additional deadline.

Article 738

Notwithstanding divergent agreements or commercial customs, where the sold property items need to be conveyed from one location to another and the seller is not bound to do the delivery at a location specified in the contract, the risk shall be assigned to the purchaser upon the property items being handed over to the first transporter bound for the purchaser, even if the property items have been loaded falling short of being wrapped up.

Where the seller is bound to hand the property items over to the transporter at a certain location specified in the contract, the risk shall be assigned to the purchaser upon the property items being handed over to the transporter at the specified location. The fact that the seller is authorised to retain the pertinent documents of the property items does not have any impact on the assignment of the risk.

Article 739

Upon the seller incurring an essential failure in performing the contract, the provisions of the previous Article do not hinder the legal remedies available to the purchaser to the effect of performing the contractual obligations.

Joint provisions pertaining the obligations of seller and purchaser

Article 740

One party may suspend the performance of their own obligations as long as, following the termination of the contract, it becomes clear that the other party will not perform the essential share of their obligations, as a consequence of:

1. a serious incapacity to perform or of its insolvency.

2. the fashion they prepare to initiate or continue with the performance of the contract.

Where the seller sells the property items prior to the conditions referred to in the above paragraph appearing, he may demur the delivery of the property items to the purchaser even if the latter is in possession of a

document legitimizing him to get hold of them.

Such a demurrer shall be of exclusive impact on the relationship between the purchaser and the seller.

The party suspending the performance shall forthwith inform thereof the other party and shall resume performance, upon the other party offering appropriate guarantees in connection with their own obligations.

Article 741

In the event of a sale contract containing partial deliveries, one party may, where the failure of the other contracting party to perform any of the obligations regarding a delivery consists an overall performance failure of specific importance of the contract connected to this delivery, declare the contract terminated regarding the same delivery.

Where the performance failure of one of the contracting parties regarding their obligations pertaining to a delivery gives the other party reasonable grounds to hold that an essential performance failure will occur regarding the upcoming deliveries, they may declare the contract terminated, provided they do this within a reasonable time period.

The purchaser declaring the contract terminated in connection with a delivery may, concurrently, declare the termination even for the deliveries having occurred earlier or for the upcoming deliveries, as long as these deliveries could not, due to their interconnection, be used for the purpose designated in the contract by the parties.

Article 742

In the event of termination of contract, the seller shall give back the price and pay to the purchaser the expenses and payments made legally.

The purchaser has to hand the property item back, as long as the latter did not get lost or destroyed as a consequence of its flaws.

Article 743

Where one party delays the payment of the price or any other amount, the other party shall be entitled to seek the interest on these amounts in addition to the indemnity.

Article 744

The has to give the paid price back to the purchaser, even if the value

of the property item has reduced or it has been harmed. Where the value reduction or harm emerge as a consequence of the conduct of the purchaser, the above amounts shall be deducted from the profit that the purchaser has acquired, in addition to the provisions of Article 640.

Article 745

Where the contract has been terminated and as long as, reasonably and within a reasonable time of such termination, the purchaser has made a replacement purchase or the seller has resold the property items, the party seeking the indemnity may acquire the difference between the price foreseen in the contract and the price of the replacement purchase, as well as any other indemnity which might be sought under the above Article.

Sale of property item with reservation

Article 746

Where the sale price is paid in instalments, the purchaser shall acquire the ownership over the property item upon the payment of the last instalment of the price, assuming the risks at the moment of handover. The transfer of ownership with the reservation of the above condition shall be reflected in the contract.

Article 747

The ownership transfer under the above provision may be referred to towards the creditors of the purchaser, as long as it emerges out of a written act containing the specific date prior to the measure of security interest.

Where the sale scope is composed of immovable or registered movable property items, the provisions on registration shall apply.

Article 748

The failure to pay one instalment, not surpassing one eighth of the price, shall not bring about the termination of the contract and the purchaser shall maintain his right to the deadline regarding the subsequent instalments, regardless of any other different agreement.

Article 749

Where the termination of the contract is a consequence of the failure of

the purchaser to meet his commitments, the seller shall give back the payments already made, notwithstanding his right to a reward regarding the use of the property item, or any indemnity.

Where contractually foreseen that the payments having been made shall remain with the seller upon an indemnity title, the court may, depending on the circumstances of the case, reduce such indemnity.

Article 749/a

(Added up by Law no. 8536, dated 18/10/1999, Article 4)

The rules contained in Articles 746, 747, 748 and 749 shall not apply to the sales of property items with reservation, regarding financial transactions secured by lien, whereof the rules contained in specific laws shall apply.

Sale of immovable property items

Article 750

The sale of immovable property shall occur in the way foreseen in Article 83 of this Code, otherwise it shall be invalid.

Article 751

The conditional sale of immovable property items shall be entered into the registers of immovable property, upon the condition being established.

Article 752

Where an immovable property item is being sold by way of identifying the measurements and a price set on the basis of a payment for every measurement unit, the purchaser shall be entitled to a price reduction, as long as the actual size of the immovable property item is smaller than the one indicated in the contract.

Where the measurements of the property item turn out larger than the ones indicated in the contract, the purchaser has to pay the price excess, however, he shall be entitled to withdraw from the contract, as long as the excess exceeds one twentieth of the declared size.

Article 753

Where the price is set in connection with the immovable property item as such and not in connection with its size, even if this is indicated, no price reduction or increase is done, unless the real size is smaller or larger in

excess of one twentieth of the size indicated in the contract.

Where an additional price has to be paid, the purchaser may choose between the withdrawal from the contract or the payment of the excess.

Article 754

Where two or more immovable property items have been sold based on the same contract for a single and same price, by indicating the size of each of them, and it emerges that the size of one is smaller and of the other bigger, the compensation to the appropriate amount shall be made; the right to the excess or reduction of prices shall be regulated by the provisions contained above.

Article 755

The right of the seller to the excess and of the purchaser to the reduction of the price or withdrawal from the contract shall lapse two years following the delivery of the immovable property.

Article 756

The right of the purchaser to demur regarding the flaws of the immovable property item shall lapse upon the expiry of five years since the moment of the delivery of the property item.

CHAPTER II
SWOPPING

Article 757

Swopping is the contract the scope whereof is the mutual transfer of ownership over the property items or other titles from one contracting party to the other.

Article 758

The swopping party having sustained the acquisition of the property item and not intending to re- acquire it shall be entitled to acquire its value, under the specific provisions of sale, as well as the indemnity.

Article 759

The swopping and further additional expenses shall be imposed on both parties in equal shares, unless a different agreement exists.

Article 760

The rules contained in the sales contract shall also apply to the swopping contract, as long as they are in compliance with it.

CHAPTER III
ENDOWMENT

Article 761

Endowment is a contract by way thereof one party transfers the ownership over a certain property item or over a real right free of charge to the other party, which the latter accepts.

Waiver of a title prior to being acquired or waiver of succession shall not consist an endowment.

The Joint Chambers of the Supreme Court in the unifying decision no. 23, dated 01.04.2002, regarding the types of rights that can be disposed of by donation or sale, as well as the nature of these contracts, determined the following:

1. Article 761 of the Civil Code explicitly stipulates that the object of a donation contract can be goods or real rights. The preemption right of the ex-owner (his heirs), recognized in Article 21 of the Law "On the Return and Compensation of Properties to Former Owners," is considered a real right and, as such, can be disposed of through a donation contract. The right to compensation for properties belonging to the former owner but which cannot be returned, according to the provisions of the law on the return and compensation of properties to former owners, is also considered a real right. The right to compensation for the former owner (his heirs) can also be freely disposed of by donation.

   The preemption right and the compensation right of the former owner (his heirs) are included in the concept of a person's

property, which encompasses a broad range of rights, not only real but also personal (obligatory).

2. Article 761 of the Civil Code explicitly stipulates that the object of a donation contract can be goods or real rights over goods. Meanwhile, according to Article 705 of the Civil Code, the object of a sale contract is the transfer of ownership of a good or the transfer of a right in exchange for payment of a price. Putting aside the element of compensation, which constitutes a fundamental difference between these two contracts, and comparing them regarding their object, it is observed that while a donation contract, by its nature, is a contract for the transfer of ownership of a good or other real rights from the donor to the recipient, the object of a sale contract today is much broader. It includes not only the transfer of ownership of certain goods or other real rights to the buyer but also the transfer of other rights belonging to the seller, as long as these rights are freely available and are not restricted by any legal prohibition or the inherent nature of these rights, especially those of a personal nature.

3. While the sale contract is consensual in nature, the donation contract is considered a real contract, meaning it is considered concluded at the moment of delivery of the movable or immovable good that constitutes its object (Article 764 of the Civil Code). However, when the object of the donation contract is not goods but other rights over goods, such as ideal shares (quotas) in co-ownership or other real rights over the goods of others, then the donation contract takes on a consensual character. In conclusion, the donation contract of the preemption right of the former owner (his heirs) and the donation of the right to compensation for properties that cannot be returned, under the conditions of the Law "On the Return and Compensation of Properties to Former Owners," is considered a consensual contract, meaning that it is considered concluded as soon as the donor expresses, in the form required by law, his intent to make the donation, and the recipient of the donation, in the same form, expresses his intent to accept the donation.

Article 762

Endowment can only contain the current property of the endowing party. Upon including the upcoming property, the endowment shall be invalid concerning this share.

Article 763

The endowment being restricted to recurrent commitments shall lapse upon the death of the endowing party, unless the contract provides for differently.

Article 764

The endowment of immovable property items shall occur by way of public act and registration, otherwise it shall be invalid.

The acceptance may occur in the same act or in a subsequent act. Endowment in such a case shall be considered completed since the moment when the acceptance act has been notified to the endowing party.

Upon movable property items falling under its scope, it shall be valid upon them being specified by way of indicating their value in the endowment contract.

The contract is considered concluded from the moment of delivery of the thing.

The endowing and accepting party may revoke their declaration prior to the conclusion of the contract.

Article 765

The endowment may be demurred on the error of grounds, as long as the latter is connected to the fact or the right and the grounds emerge from the act and having induced the endowing party to make the endowment.

Article 766

The endowing party shall, in connection with the failure to perform or the delay in endowment, be liable only for conducts affected intentionally or gross negligence.

Article 767

The endowing party may put the restitution of the endowed property items as a condition, on the grounds of the previous death of the party accepting the endowment or of the previous death of his descendants.

Restitution may only occur to the benefit of the endowing party. The agreement to the benefit of others shall be considered as not concluded.

Article 768

Endowment may be dependant on a condition or encumbrance. The endowing party shall be bound to perform the encumbrance obligation within the limit of the worth of the endowed property item.

Any interested party, in addition to the endowing party, may act to the effect of performing the encumbrance obligation.

The termination of the endowment contract due to the failure to perform the encumbrance obligation may be sought by the endowing party or their hairs, as long as this is foreseen in the endowment act.

The illegal or infeasible encumbrance shall be held non-existent, however, it makes the endowment inexistent as long as it consisted the only decisive grounds in the contract.

Article 769

The endowing party shall be bound to provide security to the accepting party regarding the belonging of the endowed property item and the expropriation, which they might sustain from others regarding the endowed property items, in the following cases:

1. if they have promised the security explicitly.

2. where taking over the property item depends on the fraud or their personal attitudes.

3. where the endowment imposes an encumbrance on the accepting party or the endowment is made on grounds of remuneration, these being instances where the security is imposed up to the worth of the encumbrance or the entirety of promises obtained from the endowing party.

Article 770

The security provided by the endowing party does not extend over the flaws of what has been endowed, unless the endowing party has acted fraudulently, or where a specific agreement exists.

Article 771

The endowing party may, with regard to the endowing acts not being ordinary or not being made against remuneration, seek the revocation of the endowment, as long as the accepting party:

a) has intentionally murdered or tried to murder the endowing party, their spouse or children, or parents;

b) unfairly refuses to provide alimony to the endowing party, upon legally being bound to do so.

The lawsuit for revoking the endowment shall be brought within one year since the date that the endowing party was notified on the grounds entitling them to seek the revocation of the endowment.

The lawsuit being brought may be pursued even by the heirs of the endowing party or may be brought by the former, as long as the endowing party has died within one year, since the day when the grounds for bringing the lawsuit emerged.

An earlier waiver to bring the lawsuit shall be invalid.

The revocation of the endowment shall not affect the rights being acquired by the third parties over the endowed property item before the lawsuit being brought.

CHAPTER IV
SUPPLYING

Article 772

Supplying contract is a contract wherewith one party shall, against the payment of a price, be bound to perform recurrent or continuous supplying of property items to the benefit of the other party.

The supplied property items maybe movable or immovable, while they may be in the form of energy or credit titles.

Article 773

Upon the quantity of the supplies not being determined, it is implied that the agreement refers to the quantity for meeting the normal needs of the party being supplied with up to the moment of the performance of the contract.

Upon the parties setting out just the upper and lower limit for the supplies or for specific services, it shall be incumbent on the party entitled to supplies to determine the appropriate quantity within the limits set.

Where the quantity of supplies shall be set out according to the needs beyond a minimum quantity set out in the contract, the party being supplied with shall respond regarding the respective quantity according to the needs as long as the minimum quantity is surpassed.

Article 774

Where the price regarding the recurrent supplying shall be set out under Article 707 of this Code, the ending time of the specific supplies and the venue where they have to occur shall be taken into account.

Article 775

The price regarding recurrent supplying shall coincide with the document of specific supplies.

The price regarding continuous supplying shall defrayed abiding by ordinary timing.

Article 776

The time period being set out in the contract regarding specific supplies shall be presumed to be set out to the benefit of both parties.

Where one party being supplied with has been granted the right to set out the timing for specific supplies, they shall inform of such a date the supplying party by way of an early notice at a reasonable stage.

Article 777

In the event of the failure by one party to perform their specific obligations, the other party may seek termination of the contract, as long as this failure is of specific significance and capable of harming the trust in the security of the upcoming performances.

Article 778

Where the party being entitled to be supplied with has not performed their obligation and this failure is of insignificant importance, the supplying party may not suspend the performance of the contract in absence of a reasonable advance warning.

Article 779

Where the condition of exclusiveness has been foreseen to the benefit of

the supplying party, the other party cannot obtain supplies of the same kind from third parties, nor can they affect, of their own resources, the production of property items consisting the scope of the contract, as long as no different agreement is in effect or the law does not dispose of differently.

Article 780

Where the condition of exclusiveness has been imposed to the benefit of the party being entitled to supplies, the supplying party may not, directly or indirectly, provide supplies of the same kind and consisting of the scope of the contract, in the zone wherein the exclusiveness has been granted and within the contract period.

The exclusiveness condition being contained in a supply contract shall consist an encumbrance condition requiring specific written consent.

Article 781

The party being entitled to supplies shall, upon assuming the obligation to expand the sales of property items whereof it enjoys exclusiveness, be liable for damages being incurred due to the failure meet this obligation in the zone assigned to them, even if they have performed the contract for the minimum quantity being set.

Article 782

Where the duration of supplying has not been set out, each of the parties may withdraw from the contract, by way of notifying the supplying party in advance within the time period being set out by them and, in lieu thereof, within a reasonable time period, taking account of the nature of supplying.

Article 783

The provisions regulating the contract of specific supplies shall also apply to the supply contract, as long as they are not at variance with the above provisions.

CHAPTER V
EMPHYTEUSIS

Meaning of emphyteusis

Article 784

Emphyteusis is a contract, whereof one person is granted the right to use and improve an immovable property, against a recurrent, in cash or in kind, remuneration.

Article 785

The duration of emphyteusis shall be set out in the contract.

Article 786

The emphyteusis contract shall be drafted in the form required for the transfer of ownership over immovable properties.

Rights and obligations of the owner and emphyteusis lessee

Article 787

The emphyteusis lessee shall have full use of the property item as the owner, except the constraints provided for in the contract for the creation of emphyteusis.

However, they may not, in absence of the consent of the owner, use the property item in another designation.

Article 788

Belonging to the emphyteusis lessee shall be the fructus naturales being separated, fructus civiles where ever becoming due and the titles to use the soil within the bounds set out by law, unless foreseen differently in the contract.

Article 789

Where the property being under emphyteusis gets entirely lost, the emphyteusis shall forfeit while the emphyteusis shall be relieved of the respective obligation for the future.

Where the property gets lost or harmed in obvious and significant parts

thereof to the extent that no sufficient income can be obtained to defray the remuneration set out in the contract, a reduction or termination of the contract maybe sought, with the parties performing their mutual obligations.

The request shall be made within one year of the day of the occurrence of the loss or harm of property under emphyteusis.

The emphyteusis lessee shall not seek his release from the obligation to pay the remuneration or its reduction due to non-production or loss of yields, be it even casually.

Article 790

Granting the property to under-emphyteusis shall be forbidden.

Article 791

The emphyteusis lessee may, at any time, seek the termination of the contract and end of emphyteusis, unless provided for differently in the contract.

The emphyteusis lessor may seek the termination of the contract and end of emphyteusis, upon the emphyteusis lessee failing to defray the respective duties for two periods in succession, or harming or failing to maintain and improve the property and evidently failing to meet the obligations stemming from the contract.

Article 792

The taxes and other duties charging on the property shall be imposed on the emphyteusis lessee, unless the law provides for differently.

Where these obligations have contractually been imposed on the owner, they cannot exceed the remuneration set out for the emphyteusis.

Article 793

In the event of alienation of the emphyteusis, the new emphyteusis lessee and the previous one shall jointly be bound to defray the residue of the emphyteusis remuneration, unless the previous emphyteusis lessee has been given notice of the alienation act of emphyteusis.

In the event of alienation of such an entitlement by the owner, the acquiring party may not seek the performance of obligations from the previous emphyteusis lessee, prior to the latter being given notice of the alienation act.

Article 794

Where the contract does not provide for differently, the emphyteusis lessee shall, in the course of duration of emphyteusis or upon its end, be entitled to remove the constructions, further works or cultivated plants being beyond the emphyteusis terms, or which have been bought from the owner, however, always not harming the property and reinstating it in the former situation.

Article 795

Upon the contract being terminated, the emphyteusis lessee shall be entitled to the improvements being affected at the extent of the worth increase of the property, as long as it exists at the time of return.

Article 796

The emphyteusis lessee shall be entitled to the retention of the property item granted under emphyteusis up to the defrayment of credits stemming thereof. Any contrary agreement shall be invalid.

The owner shall be entitled to retain the property items belonging to the emphyteusis lessee until the defrayment of the obligations due to him.

Article 797

Upon the emergence of the need to affect extraordinary renovations to the property granted to emphyteusis the emphyteusis lessee shall be bound to notify thereof the owner and provide to him the opportunity to accomplish them.

The emphyteusis lessor shall not be liable to perform the ordinary reparations.

Article 798

The persons enjoying jointly the emphyteusis title shall be jointly liable for the payment of the remuneration of emphyteusis.

Where the property granted under emphyteusis is divided and they enjoy parts thereof, each of them shall be liable for the obligations stemming from emphyteusis, proportional to the worth of the part each one is enjoying.

Article 799

The provisions of this chapter shall apply even if emphyteusis is enjoyed by one or more legal entities, unless this is prohibited by law.

Article 800

The emphyteusis lessee may, to the use of the property, acquire active easements, as well as encumber it with passive easements, for a duration foreseen in the contract, under all circumstances giving written notice to the emphyteusis lessor.

CHAPTER VI
LEASE

GENERAL PROVISIONS

Article 801

Lease is the contract where one party (landlord) is bound to make available to the other party a certain property item, to temporary enjoyment against a certain remuneration.

Article 802

The landlord shall:

1. hand over the property item to the tenant at the specified time and in such a situation as to allow the use whereon they have agreed.

2. take care for maintaining the property item in the same situation.

3. guarantee the peaceful enjoyment during the lease period.

Article 803

The lease contract shall not be entered into for a longer period than thirty years, unless provided for differently by law. Where it has been entered into for a longer period or for an indefinite period, it shall be valid only for the period referred to above.

The lease contract for the buildings as residual tenure shall not be entered into for a longer period than five years.

The time period for the chattels made available as equipment for an immovable property item shall be equal to the lease duration of the latter.

The lease contract for a longer period than one year shall be made in writing.

Article 804

The tenant having performed the obligations stemming from the contract appropriately shall be entitled to a preference against other persons, as long as, upon the expiry of the lease period, a renewed contract shall be entered into.

Rights and obligations of the landlord

Article 805

The landlord shall, during the lease period, accomplish the entire repairing works, with the exception of works for the everyday maintenance, being incumbent on the tenant.

The expenses for guarding and the ordinary maintenance of the chattels shall be incumbent on the tenant, unless the agreement provides for differently.

Where the rented property item needs repairing not being incumbent on the tenant, the latter shall be bound to notify the landlord.

In the event of repairs being urgent, the tenant may accomplish them immediately against the reimbursement of expenses, provided that he notifies thereof forthwith the landlord.

Article 806

Where at the time of handover the rented property item is impaired by flaws diminishing the contracted usage worth evidently, the tenant may seek the termination of the contract or reduction of the lease price, unless he was knowledgeable about the flaws or it was easily discernable.

The landlord shall be bound to pay to the tenant for the damages incurred due to the flaws of the property item, as long as he does not establish that he was, not culpably, not knowledgeable about these flaws at the moment of handover.

Where the flaws of the property item pose a significant risk for the health of the tenant, of his family members or his dependants, the tenant may

seek the termination of the contract, even if he had been aware of the flaws.

Article 807

The agreement, wherewith the liability of the landlord concerning the flaws of the property item is excluded or restricted, shall be of no effect, as long as the landlord has concealed them in bad faith to the tenant, or where the flaws are such as they hinder the enjoyment of the property item.

Article 808

The provisions of the above articles are applicable also in the instances of flaws of the property item occurring in the course of the rent.

Article 809

Where in the course of the rent the rented property item needs urgent repair, the tenant shall allow the accomplishment. Where the property item is not repaired within a reasonable time, the tenant shall be entitled to a proportional reduction of the rent amount.

Article 810

The landlord shall be bound to guarantee the tenant against the intrusions diminishing the usage worth and enjoyment of the property item, caused by third parties asserting titles over the same property item.

The landlord shall not be bound to guarantee the tenant against the intrusions of third parties not asserting titles over the property item. The tenant shall in such a case reserve his right to sue against the third parties on his own account.

Article 811

Where the intrusive third parties assert having titles over the rented property item, tenant shall be bound to give immediate notice thereof to the landlord, or he will be bound to pay the damages. Where the third parties take legal action, the landlord shall be bound to participate in proceedings, if summoned.

Rights and obligations of the tenant

Article 812

The tenant shall:

1. take over the property item and use it for the destination designed in the contract and, in lieu of such provisions, according to the destination emerging out of the nature of property item.

2. make payments within the determined timing.

Article 813

The tenant shall be held liable for the loss or damage to the property item occurring in the course of the lease contract.

Article 814

The tenant shall hand the property item back to the landlord in the same situation, in compliance with the description made by parties in the contract, notwithstanding the ordinary harm or consumption due to the usage of the property item in compliance with the contract.

In lieu of the description in the contract, it is assumed that the tenant has taken over the property item in a good usage situation.

The tenant shall not be liable for the loss or inflicted harm as a consequence of depreciation. The chattels shall be return back where they were taken over.

Article 815

The tenant being in default for handing the property item back shall be bound to defray the payment determined until the hand-back moment to the landlord, in addition to the liability to pay respective damages.

Article 816

Unless provided for differently in the law, the tenant shall not be entitled to remuneration with regard to the improvements made to the rented property item. However, if he had the consent of the landlord granted, the latter shall be bound to pay a reimbursement equal to the smallest amount between the amount of expenditure and the value of the useful increased worth at the moment of delivery. Where the tenant is not entitled to reimbursement, the worth of improvements may indemnify the damage having occurred due to the grave carelessness of the tenant.

Article 817

The tenant having added parts to the rented property item shall be

entitled to remove them upon the expiry of the lease period, as long as this is feasible without damaging the property item, unless the landlord agrees to keep these additional parts. The latter shall, in such a case, pay to the tenant an indemnification amount equal to the smallest amount between the amount of expenditure and the value of the additional parts at the moment of delivery.

Where the additional parts cannot be removed without damaging the property item and they consist an improvement of the latter, the rules provided for in Article 810 shall apply.

Article 818

Unless there is a contrary agreement, the tenant shall be entitled to sublease the rented property item, however, he shall not assign the contract to another person in lieu of the consent of the landlord. With regard to chattels, subleasing shall be subject of the consent of the landlord.

Article 819

Sparing his rights to the tenant, the landlord may take legal action against the sublease tenant to seek the sublease price, where of the latter is still owing at the moment of filing the lawsuit and to bind him to meet the entire obligations stemming from the sublease contract.

Declaring the lease contract invalid or its termination shall extend its effects even on the sublease tenants and the decision made between the landlord and the tenant shall extend its effects even on them.

Ending of lease contract

Article 820

The rent limited to a time period set out by parties shall cease upon the expiry of this time period, while declaration of its expiry not being necessary.

The rent not being limited to a time period shall not cease, as long as one of the parties gives notice to the other party that they withdraw from the rent prior to the time period set out under Article 803 of this Code.

Renewal of lease contract

Article 821

The rent shall be renewed as long as, upon its duration expiry, the tenant

is granted the use of the rented property item in lieu of the objection of the landlord.

The new rent shall be regulated under the same conditions as the previous one, however, the duration shall be determined similarly to the rents limited to a time period.

Relations to third parties

Article 822

The lease contract may be referred to against the third parties having acquired the rented property item, provided that the contract have a specified date prior to the alienation of the property item.

The provisions of the above paragraph shall not apply to the rent of chattels not registered in public registers, as long as the acquiring party has ensured the possession in good faith.

The rent of unregistered chattels shall not be referred to against the third parties having acquired them, provided within the 9-year period since the effectiveness of the rent.

The acquiring party shall always observe the lease relationship if he has taken over the obligation towards the alienator.

Article 823

Where the lease relationship does not contain any specified date, however, the possession by the tenant in terms of time falls prior to the transfer of ownership, the acquiring party shall not be bound to observe the lease relationship, except the duration pertaining to the lease relationship of indefinite period.

Article 824

Where the tenant is excluded by the acquiring party, since the lease contract did not contain any specified date prior to the transfer of ownership, the landlord shall be bound to pay the damages.

Article 825

The acquiring party shall, regarding the rights and obligations stemming from the lease contract, be bound to observe the lease contract since the acquisition date.

A. LEASE OVER IMMOVABLE PROPERTY ITEMS OF ARABLE NATURE

GENERAL PROVISIONS

Article 826

The lease contract over the immovable properties being used for arable cultivation for a time period in excess of nine years shall be subject to notarial certification and it shall be registered with the public register.

Article 827

The landlord shall, by way of an inventory, hand over the immovable property, such as arable land, pasture grounds, residing or accessory buildings auxiliary to the arable or livestock activity, as well as the chattels auxiliary to such activity, to the tenant. The right to object the contents of the inventory and the presumption of its accuracy shall be regulated under the provisions of this chapter.

Article 828

The landlord shall defray the financial duties and taxes charging on the immovable property.

Article 829

The landlord shall permanently be entitled to check the rented property in order to establish whether the tenant is abiding by the agreement referring to the obligations inserted in the contract and to agro-technical nature and rules.

Article 830

The tenant shall defray the lease price in the time and the fashion set out in the contract. The lease price may be in kind or in pecuniary payment.

Right to cultivation

Article 831

The right to cultivation implies the right of one contracting party to decide what is going to be cultivated from one period to the other. This right shall be regulated upon the agreement of the parties.

Where the lease price consists entirely or overwhelmingly out of the arable products, being the products cultivated in the rented immovable property, the right to cultivation shall be vested with the landlord, as long as the contract or the local customs do not provide for differently. Where the lease price consists entirely or partially out of a pecuniary amount to be given to the landlord, the right to cultivation shall be vested with the tenant, as long as the contract or the local customs do not provide for differently.

Article 832

Where the party having the right to cultivation fails to notify the other party of the cultivation plan at the right time and waiting further for such notice could bring about grave consequences in the arable cultivation, this right shall be transferred to the other party.

Time and expenses of cultivation

Article 833

The tenant shall, under his own responsibility, decide about the time of making the cultivation arrangements, as well as for the agro-technical ways and novelties he is to apply. The tenant may just make recommendations in this regard.

Article 834

The expenditure needed for the cultivation shall be defrayed by the tenant. Where the lease price consists entirely or overwhelmingly of the product being cultivated, the landlord shall pay in advance and free of any interest those expenses which might be needed for the cultivation to the tenant, as long as the latter cannot afford them on their own.

The advance payment shall be repaid to the landlord out of the upcoming harvest.

Defrayment of the lease price

Article 835

The lease price shall be defrayed according to the timing set out in the contract. In absence of such a provision, it shall be defrayed at the end of each contract year, if the price has been set out in pecuniary amount.

The lease contract year shall start on the day when the rented property item is delivered to the tenant.

Article 836

Where the lease price consists of a part of the agricultural products or proportional to it, the pertinent part shall be handed over to the landlord upon his request, after the harvest has been collected.

In lieu of such an agreement, the local customs shall be abided by.

Article 837

The tenant may seek the lease price reduction or adjournment of payment, if unforeseeable circumstances or extraordinary events have slowed down production of one year to at least a half compared to the normal production.

Article 838

The tenant may seek the revision of the lease price to his advantage, taking account of the ordinary production, significance of the sustained loss, profits he already had in previous years and those, which he could ensure during the duration of the contract.

Article 839

In the event of the termination of the contract, the tenant is not bound to make available the seeds for the upcoming cultivation, unless the contract or the local customs foresee differently.

Article 840

The tenant does not enjoy the right to acquire the harvest, which at the time of the contract duration expiry, were not collected yet. However, the court may admit that the tenant be reimbursed the expenses which he might have incurred for cultivating the harvest. This reimbursement shall, however, not exceed the worth of the harvest benefitted by the tenant.

B. LEASE OF PRODUCTIVE PROPERTY ITEMS

Article 841

Where the scope of the rent is the enjoyment of a productive, movable or

immovable, property item, the tenant shall arrange for its administration in compliance with the economic designation of the property item.

Article 842

Upon the parties not determining the lease duration, each of them may withdraw from the contract by way of giving prior notice to the other at an appropriate time.

Article 843

The landlord shall:

1. hand over the property item along with the accessories at an appropriate situation for the usage and production whereto it has been designated.

2. accomplish, on its own expenses, the extraordinary repair that the property item needs in the course of the lease duration.

Article 844

The landlord may seek the termination of the contract, as long as the tenant does not make available the necessary resources for the administration of the property item, as long as the technical rules are not applied, or the economic designation of the property item changes steadily.

Article 845

The tenant may launch initiatives for boosting the productiveness of the rented property item, suffice they do not incur obligations to the landlord, or not encroach upon his titles.

Article 846

Where, as a consequence of a law or a mandatory decision regarding the productive administration of the property item the contractual relationship changes essentially, to the advantage of one and the disadvantage of the other party, a lease price increase or reduction, or, as appropriate, the termination of the contract may be sought, unless the law provides for differently.

Article 847

The tenant cannot sublease the property item in lieu of the consent of the landlord.

Where the tenant breaches such an obligation, the landlord may seek the termination of the contract.

The right to assign the lease contract to another shall include the sublease, unless parties have disposed of differently in the contract.

Article 848

The lease contract provisions shall apply even to the lease of the productive property items, to the extent they are compatible therewith.

C. LEASING

Article 849

Based on a lease agreement, one of the parties shall be bound to make available to the other party, for a certain period, a movable or immovable property, against a payment on recurrent periods, set out in connection with the worth of the property item, contract duration and eventually with other elements referring to the agreement of the parties.

The property item shall be acquired or constructed by the landlord in response to the wish and description of the tenant and the latter shall, upon the expiry of the contract duration, be entitled to acquire ownership over it, against the payment of predetermined amount.

The landlord shall be liable to the tenant under the general rules regulating the failure to hand over the property item or the delay in handing over the property item, as well as the flaws of the property item.

It may be provided for in the agreement that the tenant shall, prior to seeking his rights from the landlord, approach the person making the delivery (supplier) regarding his own rights or the rights assigned to him.

CHAPTER VIII
CONTRACTS FOR WORKS AND SERVICES

Contents

Article 850

Contracts for works and services are the contracts where one party (entrepreneur) is, out of their own resources and assuming the risk, bound to accomplish a work or provide a service or an independent accomplishment of works, while the other party is bound to accept it against a price set out in the contract.

Setting out the price

Article 851

Where the parties did not set out any price for the contract of works and services, neither determined the way for setting it out, it shall be calculated based on the existing fees or based on the local customs. In the event of a dispute, it shall be set out by the court.

Making materials available

Article 852

The materials being necessary for accomplishing the work shall be made available by the entrepreneur, as long as the agreement does not provide for differently.

Rights and obligations of the entrepreneur

Article 853

The entrepreneur shall warn the ordering party at the appropriate time of:

a) the material being made available by the ordering party and not being of good quality, as long as this is detected in the course of works and harms the quality of the works;

b) instructions of the ordering party not being possible to be applied or their application renders the works to be unstable or inappropriate;

c) circumstances, being out of the entrepreneur's reach, rendering the work to be unstable or inappropriate.

The entrepreneur shall be liable for the damage sustained by the ordering party, as long as he does not warn him as above.

Article 854

The entrepreneur shall be entitled to relinquish the implementation of the contract and seek damages regarding the damage he has sustained, as long as the ordering party does not replace the materials being of inappropriate or bad quality, or where the instructions for the accomplishment of the work are not changed, despite being warned by him at the right time.

Article 855

The entrepreneur shall be liable for the loss or harm to the material made available to him by the ordering party, unless it is established that the loss or harm has occurred of the material being of bad or inappropriate quality, or due to the implementation of the instructions of the ordering party for the accomplishment of the work, despite the entrepreneur warning the ordering party at the right time.

Article 856

The entrepreneur shall be entitled to seek the remuneration of his labour, where the work, prior to being handed over to the ordering party, gets lost or harmed due to the material being of a bad or inappropriate quality, or due to the implementation of the instructions of the ordering party for the accomplishment of the work, despite the entrepreneur warning the ordering party at the right time.

Article 857

The entrepreneur cannot subcontract the work or services further, in absence of the consent of the ordering party.

Article 858

The entrepreneur may not, in lieu of the consent of the ordering party, change the modes of operation set out in the contract with regard to accomplishing the work.

Even if the consent has been granted, the entrepreneur shall not, as long as the overall price of the work has been set out, be entitled to reimbursement regarding the changes and addenda, unless a different agreement exists.

Article 859

Where to the effect of accomplishing the work according the standards it is necessary for the project to be changed and the parties do not agree thereon, the dispute shall be resolved by the court.

Where the price differences exceed the amount of the respective price by one-sixth, the entrepreneur may seek the termination of the contract and, as appropriate, an appropriate reimbursement of the damages.

Where the changes are significant, the ordering party may withdraw from the contract by way of paying an appropriate indemnification.

Rights and obligations of the ordering party

Article 860

The ordering party may undertake changes to the project, provided that their size does not exceed one-sixth of the respective total price. The entrepreneur shall be entitled to be reimbursed for the main pieces of work having been carried out, even if the price of the work has been set out as a flat price.

The above paragraph does not apply to the changes to the project which, although they abide by the limits set out above, bring about considerable changes to the nature of the work or in terms of quantity of separate categories of pieces of work, provided for in the contract for the accomplishment of the same work.

Article 861

The ordering party shall be entitled to check the accomplishment of pieces of works and their compliance to his own expenses.

Where, in the course of the activity, it is detected that the accomplishment is not continuing in line with the terms set out in the contract and with the standards, the ordering party may set out a reasonable time limit, within which the entrepreneur shall agree to those terms. Where the deadline expires without any positive changes, the contract shall be terminated, while not impairing the right of the ordering party to damages.

Article 862

Where, as a consequence of contingent circumstances, increases or reductions of the cost of materials or labor have occurred, thus determining

an increase or reduction of the respective total price in excess of one-tenth, the entrepreneur or the ordering party may seek the revision of the price. This revision may be set out just for the extent of the difference exceeding one-tenth. Where in the course of the works, difficulties of geological, hydric or other nature are encountered, not foreseen by the parties, and making the task of the entrepreneur very difficult, the latter shall be entitled to an appropriate compensation.

Article 863

The ordering party shall be entitled to check the accomplished work before taking it over.

The check shall be carried out by the ordering party, once the entrepreneur has made the appropriate arrangements for the check. Where, despite the invitation extended by the entrepreneur, the ordering party does not carry out the check in absence of reasonable grounds or he fails to notify the outcome of the check within a short time period, the work shall be considered to have been accepted.

Where the ordering party takes over the work without raising any reserves, it shall be considered to be accepted even if the check has not been carried out.

The entrepreneur shall be entitled to seek remuneration at the respective amount, if the work is accepted by the ordering party, unless a different agreement is in place.

Guarantee and denouncing the flaws of the work

Article 864

The entrepreneur shall be bound to offer a guarantee regarding the distortions and flaws of the work. The guarantee shall not be required where the ordering party has accepted the work and the distortions or flaws were known to him or were evident, unless they have been concealed in bad faith by the entrepreneur.

The ordering party shall notify the entrepreneur of the distortions and flaws within 60 days of their detection restricted to a forfeiture term, thus bringing about the lapse of the right. The notification is not indispensable where the entrepreneur has recognised the distortions and flaws or where he has concealed them.

The lawsuit against the entrepreneur shall lapse within two years of

the date of delivery of the work. The ordering party being sued due to failure to pay may always make use of the guarantee, provided that the distortions and flaws be notified within 60 days of the date of detection and prior to the expiry of two year-period of the delivery date.

Article 865

The ordering party may seek that the distortions or flaws be eliminated upon the expenses of the entrepreneur or the price to be reduced proportionally, maintaining the right to indemnification in the event the entrepreneur has acted culpably.

Where the distortions or flaws of the work are such as to make it inappropriate for its designation, the ordering party may seek the termination of the contract.

Article 866

Where the scope of the contracts of works and services are buildings or other immovable property items, which of their nature, have a long-term designation and during a time period of ten years since the completion the work collapses in full or in part due to the land or shortcomings in construction or poses evident risk of collapsing or other grave shortcomings, the entrepreneur shall be liable to the ordering and other parties obtaining titles over it, provided that the denunciation be made within one year of discovery.

The right of the ordering party shall lapse within one year of denunciation.

Article 867

The entrepreneur shall, to the effect of assuming the action of recourse against the sub-entrepreneurs, shall give notice to them of the denunciation within sixty days of being informed and being restricted to a forfeiture term, thus bringing about the lapse of such right.

Termination of contract and legal consequences

Article 868

The ordering party may withdraw from the contract even if the implementation of the work or providing of the service has started, provided that they shall reimburse the entrepreneur for the incurred expenses regarding the works done and the lost profit.

Article 869

Where the contract is terminated since the implementation of the work has become impossible due to a cause out of the reach of each of the parties, the ordering party shall defray for accomplished part of the work within the limits, which is useful for them, proportional to the price set out for the entire work.

Article 870

Where the material made available to the entrepreneur by the ordering party or the work accomplished with this material gets lost or harmed, as well as where the completion of the work becomes impossible for reasons beyond the reach of each of them, however, where the entrepreneur is always in default for delivering the work, the latter shall be bound to reimburse the ordering party for the value of the material and he shall not be entitled to seek payment from him for the works accomplished.

Article 871

Where the work prepared with the material of the entrepreneur gets lost or harmed, as well as where the completion becomes impossible prior to be expiry of the period for the delivery of the work, always for reasons beyond the reach of each of them, the entrepreneur shall not be entitled to seek from the ordering party to pay for the value of the material and the work accomplished.

Article 872

Where the work prepared with the material of the entrepreneur gets lost or harmed, as well as where the completion becomes impossible due to reasons beyond the reach of the entrepreneur or ordering party, however, the ordering party being in default for taking over the work, the later shall be bound to pay to the entrepreneur the value of the material and work done.

Article 873

The contract for works and services shall not be terminated upon the death of the entrepreneur, unless the person of the entrepreneur was considered to be indispensable for the accomplishment of the work. The ordering party may always withdraw from the contract, as long as the heirs of the entrepreneurs cannot be trusted to accomplish the works or services appropriately.

Article 874

In the event of the termination of the contract due to the death of the entrepreneur, the ordering party shall be bound to pay to the heirs the value of the performed works, building on the specified price, as well as the expenses incurred for enforcing the remaining parts, however, within the limits that the accomplished works and incurred expenses are useful to them. The ordering party shall be entitled to seek the delivery against an appropriate reimbursement for the value of the prepared materials and the pending plans, to the extent that the provisions regulating the protection of inventions and intellectual property permit.

Article 875

The persons being under the authority of the entrepreneur and having carried out their activity for the accomplishment of the work or provision of the service may take legal action directly against the ordering party to acquire all what belongs to them at the time they file the lawsuit until the ordering party fulfils his obligation towards the entrepreneur.

Referring provision

Article 876

Where the scope of the contract for works and services is providing continuous or recurrent services, the provisions of this title shall apply to the extent that they are compatible with those regarding the supply contract.

CHAPTER VIII
TRANSPORT

A. TRANSPORT OF PERSONS

Article 877

The transporter shall, upon a transport contract for persons, undertake to transport persons from one location to another.

Article 878

In addition to the liability for delays and failure to perform the transport,

the transport shall be liable for the entire calamities affecting the person in the course of the journey and for the loss or harm to the personals of the traveller, as long as he does not establish that he has made appropriate arrangements for avoiding the damage, referring to the specific circumstances of the case.

The conditions restricting the liability of the transporter regarding the risks affecting the traveler shall be invalid.

This provision shall apply also the transport contracts being free of charge.

Article 879

Regarding the transport containing interconnected itineraries, each transporter shall be liable for their own transport.

However, the damage due to the delay or interruption of travel shall be calculated taking account of the entire distance.

B. TRANSPORT OF PROPERTY ITEMS

Article 880

The transporter shall, upon the transport contract for property items, undertake to transport property items from one location to another.

Article 881

The transporter shall make the transported property items available to the recipient at the location, by the deadline and ways indicated in the contract.

Where the delivery shall not occur at the premises of the recipient, the transporter shall notify him of the arrival of transported property items immediately.

The sender having issued a bill of loading, the transporter shall show it to the recipient.

Article 882

The sender shall indicate to the transporter accurately the name of recipient and location of destination, type, weight, quantity and number

of property items, to be transported, and other data being necessary for accomplishing the transport.

Where specific documents are needed for the accomplishment of the transport, the sender shall hand them over to the transporter at the moment handing over the property items to be transported.

The damages stemming from the missing or inaccurate data or due to the failure to handover or inappropriateness of documents shall be imposed on the sender.

Article 883

Upon the request of the transporter, the sender shall issue a bill of loading upon his own signature, the latter containing their own name, residing or employment location, venue and date of issue, the data referred to in the above Article and the conditions set out for the transport.

Where the bill of loading is issued in many counterparts, the number of counterparts has to be indicated in each counterpart. The remaining copies shall lose their validity once the property items are handed over to the owner of the title.

These data shall be reliable as long as the opposite is not established towards the transporter, the latter being bound to check them out, applying the professional diligence.

Upon the request of the sender, the transporter shall issue a second counterpart of the bill of loading upon their own signature, or, as long as the bill of loading has not been issued, a receipt counterpart, containing the same data.

Article 884

The transport contract shall be considered to be concluded of the moment the bill of loading has been compiled and the sender of freight has defrayed the transport payment, unless the contract or law provides for differently.

Article 885

Where the initiation or continuation of the transport is hindered or delayed significantly due to causes not attributable to the transporter, the latter shall immediately ask for instructions of the sender, making arrangements for preserving the property items being handed over to him.

The transporter retains his right to reimbursement of expenses.

Upon the transport being initiated, he shall be entitled to the payment of a price proportional to the distance performed, unless the interruption of transport has occurred due to the full loss of property items as a consequence of casual occurrence.

Upon the circumstances making reception of instructions from the sender impossible, or upon such instructions being inapplicable, the transporter may deposit the property items or, if endangered to be harmed, or upon consisting a considerable risk for the security of the premises where they are stored, he may make arrangements for their sale at the best price.

The transporter shall notify of the storage or sale immediately the sender.

The above rules shall apply even where the recipient is not located or upon refusing or delaying asking to take the property items over, even where a conflict emerges among many recipients or regarding the right of the recipient to take over or to accomplish it.

Article 886

The sender may suspend transporting and ask for having the property items given back, or may order the delivery to another recipient, being different from the one indicated at the outset, or may dispose of differently, always abiding by his obligation to reimburse the expenses and indemnifying the damages emerging out of the second order.

Where the transporter issued a counterpart of the bill of loading, the supplier cannot dispose of the property items handed over for transport as long as he does not submit to the transporter the counterpart or the voucher indicating the new data. These have to be signed up even by the transporter.

The sender cannot dispose of the transported property items once they have been made available to the recipient.

Article 887

The rights emerging from the transport contract to the transporter shall be assigned to the recipient, if, after the property items have reached the destination or the deadline for their arrival has expired, the recipient seeks to take them over from the transporter. The recipient may assume the rights stemming from the contract, provided he pays to the transporter the credits stemming from the transport as well as the vouchers associating

the transported property items. In the event of a dispute over the amount due, the recipient shall deposit the difference falling in the scope of the dispute with a third party.

Article 888

The transporter handing the property items over to the recipient while falling short of collecting their own credits or amounts of vouchers associating the transported property items, or falling short of seeking the depositing of the amount falling in the scope of conflict, shall be liable to the sender regarding the amount he owes him and he cannot seek the latter to pay his credits. However, the right to sue the recipient shall be in place.

Liability for the loss or harm to property items during transport

Article 889

The transporter shall be liable for the loss or harm to the property items handed over to him since the moment he takes them over to the moment he hands them over to the recipient, unless he establishes that the loss or harm has been as a consequence of a casual occurrence, conduct of sender, recipient or owner of the property items being sent, or due to shrinkage or type or flaws of the property items themselves.

Where the transporter accepts the property items due to be transported without any reserve, it shall be assumed that the property items do not demonstrate any evident wrap-up shortcoming.

The transporter shall, upon the request of the recipient, be bound to take down minutes concerning the loss or harm to the property items being handed over for transport.

Article 890

The transporter shall inform the recipient of the harm that the property items may have sustained immediately and prior to the delivery of the property items.

Article 891

Where the property items have got lost or been harmed, the damage shall, unless there is a different agreement, be calculated referring to the price at the time of loading by the transporter. If the property items are harmed, the transporter shall indemnify the damage at the extent of the

difference between the value of property items at the moment of loading and the value at the moment of the delivery.

Article 892

The recipient shall, upon their own expenses, be entitled be ensured about the identity and situation of the transported property items prior to taking them over.

Article 893

Taking over the transported property items without any reserve by way of paying the transporter for his due precludes the possibility of filing a lawsuit which stems from the contract, other than in the event of fraud or grave negligence of the transporter. The rights to seek the partial loss or further harms which cannot be discerned at the moment of take-over shall be upheld, provided that the transporter be immediately notified once the damages is detected and no later than 20 days of the date of take-over.

Article 894

Where the transporter is bound to transmit the transporter property items beyond their lines through other transporters and falling short of taking from the sender a direct bill of loading for the designated location, it shall be assumed that, with regard to the transport beyond his own lines, he assumes the obligations of a forwarding firm.

Transport performed by many transporters

Article 895

Regarding the transport of property items being jointly performed by many subsequent transporters based on a single contract, the transporters shall be jointly liable for fulfilling the contract from the starting to the designated location.

The transporter being sued in connection with a conduct he is not liable to shall be entitled to take legal action against the other transporters, be it severally or jointly. Where it emerges that the conduct having caused the harm has occurred within the distance of one of the transporters, the latter shall be bound to pay full damages; or otherwise, the other transporters shall be obliged to pay damages proportionally to their distance, excluding those transporters establishing that the harm has not occurred within their own distance.

Article 896

The subsequent transporters shall be entitled to declare, either in the bill of loading or in a separate act, the situation of the property items to be transported at the moment when they were handed over to them. In lieu of such statement, it is assumed that they have taken them over in a good condition and in compliance with the bill of loading.

Liability of the sender and of transporter for delays

Article 897

Where the delivery of the property items or the delivery of the property items to the recipient does not occur by the deadline set out in the contract, the party being in default shall pay for the respective damages.

Article 898

The claims emerging out of the transport may be satisfied over the transported property items, as long as these remain with the transporter. The transporter may retain the property item being subject to lien, until the claim is satisfied and he may even sell it according to the rules for selling the pawned items.

Liability of last transporter

Article 899

The last transporter shall represent the previous transporters in collecting the respective claims emerging from the transport contract and for assuming the lien over the transported property items. Upon failing to collect the claims or assume the lien, he shall be liable to the previous creditors regarding the amounts due, except the right to take legal action against the recipient.

Reference provision

Article 900

Regarding the water and airway transports as well as the railway and postal transports, the provisions of this contract shall apply, as long as the specific legislation is not in place.

CHAPTER IX
USER CONTRACT

Article 901

Based on a user contract, one party (lender) lends the other party (borrower) free of charge a certain property item to temporal use and this latter party shall be bound to bring the same property item back by the deadline set out in the contract. Where no such deadline has been set out, the property item shall be returned upon the request of the party having lent it.

Article 902

The user contract shall be considered concluded the moment that the property item has been delivered.

Article 903

The borrower shall be bound to possess and maintain the property item diligently. He may not use it differently from the use set out in the contract or emerging out of the nature of property item. The borrower cannot, in lieu of the consent of the lender, make available the property item to the use of a third party.

Where the borrower does not meet the obligations referred to above, the lender may, in addition to the damages, seek the immediate return of the property item.

Article 904

The borrower shall be liable for the loss or harm to the property item, unless he establishes that the loss or harm to the property item would occur even if it were not given out to the user agreement.

Article 905

Where the borrower uses the property item by way of diverging from the designation of the contract or its nature and for a longer period than appropriate, he shall be liable for the loss having occurred even due to the casual incidence, unless he establishes that the property item would equally get lost, despite being used differently or having been returned by the deadline set out in the contract.

Article 906

The borrower cannot seek the reimbursement of expenses he has made for using the property item.

Article 907

Where during the specified period or prior to the borrower having ceased using the property item under the contract the lender is encountering an emergent and unpredictable need of the property item, he may seek the termination of the contract and the immediate return of the property item.

Article 908

In the event of the death of the borrower, the lender may, even if a deadline having been set out, seek from the heirs the immediate return of the property item.

Article 909

The borrower shall be bound to affect the ordinary repair to the property item received in user agreement upon his own expenses, unless the contract has been provided for differently, while the other repair shall be made by the lender.

Article 910

Where in the course of the user agreement the borrower is, to the effect of maintaining the property item, bound to sustain extraordinary, necessary and emergent expenses and he could not thereof notify the lender, the latter shall reimburse thereof the borrower.

Article 911

Where the property item given out in user agreement contained such flaws as to harm the one using it, the lender shall be bound to indemnify for the damage as long as, although he was aware of the flaws of the property item, he did not notify thereof the borrower.

Article 912

Upon the expiry of the duration of the user agreement or upon the agreement being terminated ahead of time, the borrower shall be bound to return the property item to the lender in the same condition as it was

taken over, with the ordinary changes incurred due to the usage, or in the condition foreseen in the contract. As long as the contrary is not established, it is assumed that the property item has been taken over in a good condition.

CHAPTER X
ORDERING

GENERAL PROVISIONS

Article 913

Ordering is a contract whereon one party shall be bound to perform one or more legal transactions on the account of the other party.

Article 914

Where the contractor has been granted the power to act on behalf of the contracting authority, the agency provisions shall be applied.

Article 915

The contractor acting on his own behalf shall acquire rights and assume obligations emerging from the conduct applied by the third parties, even if the latter were knowledgeable about the ordering relationship.

Third parties have no connection to the contracting authority. However, the contracting authority may, by way of replacing the contractor, may assume the rights of the credit emerging out of the implementation of the order, unless it may affect the rights enjoyed by the contractor based on the following provisions.

Article 916

The contractor shall be bound to accomplish the tasks or legal transactions having been assigned under the instructions of the contracting authority. He may derogate from these instructions, only if this is indispensable for protecting the interests of the contracting authority and where it is not possible to agree with him in advance.

Article 917

Ordering encompasses not only the arrangements whereof it has been made, but also those measures, which are necessary for their accomplishment.

The general ordering does not exclude those measures, which exceed the ordinary administration of the work, as long as they are not explicitly named.

Article 918

The contracting authority may revendicate the movable property items acquired on his own behalf by the contractor having acted on his own behalf, however not affecting the rights that third parties have acquired regarding the impacts of possession in good faith.

Where the property items acquired by the contractor are immovable properties or movable properties registered in public registers, the contractor shall be bound to return them to the contracting authority.

Article 919

The creditors of the contractor may not assume their rights over the property items that the ordering authority has, in the course of performance of ordering contract, appropriated in their name, provided that whenever it is about movable properties or credits, the ordering has to be established through a documentary evidence containing an accurate date prior to the appropriation, or where it is about immovable properties or movable properties registered in public registers, the registration of the act of revendication or of judicial request intending the revendication referred to above contain a date prior to the appropriation.

Article 920

It is assumed that ordering is based on payment. The extent of payment shall, as long as it is not set out by the parties, be set out based on the professional or customary fees and, in lieu thereof, by the court.

Article 921

The contractor shall be bound to accomplish the order with loyalty and diligently. He shall give to the contracting authority notice of circumstances being created and which might bring about its revocation.

The contractor shall also be bound to accomplish the order personally, unless he has been commissioned to assign it to a third party, as long as he is forced to do so under the circumstances or representing the interests of the contracting authority.

Article 922

The contractor shall make arrangements for preserving the property items sent on behalf of the contracting authority and protect the rights of the latter towards the transporter, as long as the property items pose harming signs or upon arriving late.

Article 923

Unless it has been provided for differently in the agreement, the contracting authority shall be bound to supply the contractor with the necessary means for accomplishing the order and for performing the obligations that the contractor has, to this effect, undertaken on his own account.

Article 924

The contractor shall, upon being thereof asked, be bound to provide to the contracting authority the entire information regarding the accomplishment of the order, along with the supporting documentation, to render account to him once accomplishing the order, as well as returning to him all what he has taken for the purposes of accomplishing the order.

Article 925

The contracting authority shall reimburse the contractor all the advance payments, along with the legal interest of the day when made, as well as defray to him the appropriate remuneration.

The contracting authority shall also pay the damages that the contractor has sustained due to the accomplishment of the assignment.

Article 926

The pecuniary claims emerging out the performance of the contractor shall prevail towards the contracting authority and his creditors.

Lapse of ordering

Article 927

The order shall lapse upon the death, incapacity to act or bankruptcy of the contracting party or contractor, notwithstanding a different agreement or upon emerging differently out of the established circumstances. However, upon the lapse of order not affecting the interests of the contracting authority, the contractor, their heirs or representatives shall be bound to continue with the administration until the contracting authority, their heirs or representatives are capable of dealing directly with these affairs.

Waiving the order and legal effects

Article 928

The contractor may waive the contract, however, as long as the contrary has been foreseen in the agreement, he shall be liable for the damages, unless the waiver occurs for a just cause.

The order granted in the interest of the contractor or third parties shall not lapse upon the revocation of the contracting authority, unless it has been foreseen differently in the contract or it occurs for a just cause, however, it does not lapse due to the death or incapacity to act sustained by the contracting authority.

Article 929

Appointing a new contractor for the same agreement or its performance by the contracting authority brings about the deprivation of the order and it shall be effective of the day when the contractors have been notified.

Article 930

Waiving the order against payment and for a definite period of time or for a certain task shall oblige the contracting authority to pay the damages, as long as it has occurred prior to the expiry of the time period or accomplishment of works, unless a just cause exists.

Upon the order being of indefinite period, the waiver shall oblige the contracting authority to reimburse the damages, as long as no prior notice has been made at the appropriate time, unless there is a just cause for revocation.

Article 931

The contractor waiving the order in lieu of any just cause shall reimburse the damages to the contracting authority. The order being of an indefinite period, the contractor waiving in lieu of any just cause shall be bound to reimburse the damages, as long as he has made no prior notice at the appropriate time.

The waiver shall always be made at such fashion and time that the contracting authority make arrangements for proceeding differently, notwithstanding the case of a significant difficulty on the side of the contractor.

Article 932

Where the order has been granted by many persons by way of a single act and for an issue of a joint interest, the waiver shall not be of any effect as long as it has not been made by all the contractors, notwithstanding the case of a just cause for the waiver.

Article 933

The activities carried out by the contractor prior to taking notice of the lapse of order shall be valid towards the contracting authority and their heirs.

Article 934

The order granted to some persons deemed to work jointly shall lapse as long as the cause of lapsing is connected to just one of the contractors, unless the agreement provides for differently.

CHAPTER XI
COMMISSION

Contents

Article 935

The agency contract is an order which scope is the purchase or sale of the property items on the account of the ordering party and on behalf of the commissioner.

Rights and obligations of parties

Article 936

The ordering party shall be bound to reimburse to the commissioner the entire expenses he has made for accomplishing the order and the remuneration foreseen in the agency contract, as well as to relieve them of any obligation that the commissioner has assumed towards the others for performing the agency order.

Article 937

The commissioner shall be assumed to be authorised to suffer delays in payments, in compliance with the local customs where the activity is being carried out, as long as the ordering party has not decided differently.

Where the commissioner suffers delays in payments, despite the prohibition of the ordering party or of local customs, the ordering party may seek from him immediate defrayment, notwithstanding the right of the commissioner to benefit the advantages emerging due to the delays in payment.

The commissioner having suffered the delay in payment shall identify to the ordering party the contracted party and the deadline being set, or the action will be considered to have been carried out in lieu of suffering the delay and the above paragraph shall apply.

Article 938

The commissioner shall not be liable for the enforcement on the side of the third party in the contract entered into by the commissioner with him on the account of the ordering party, unless the commission contract provides for differently.

Article 939

The commissioner having performed the legal transaction under more favourable conditions than contained in the instructions of the ordering party all that the commissioner has acquired on this occasion shall be assigned to the benefit of the ordering party.

Article 940

The commissioner shall be entitled to deviate from the instructions

received from the ordering party only where, due to the changing circumstances, such a deviation is necessary for the interests of the ordering party, and the commissioner cannot contact the ordering party in advance or, although he has contacted him, no response has been provided at the right time.

Article 941

The commissioner shall be bound to enter into an insurance contract concerning the property items of the ordering party being with him only if foreseen in the commission contract, or if insurance is mandatory under the law.

Article 942

The ordering party may amend the sequence of conclusion of the agreement as long as the commissioner has not concluded it. In such an instance, a part of the remuneration regarding the brokerage shall belong to the commissioner, which is determined taking account of the incurred expenses and work carried out.

Article 943

The commissioner may include in the commission fee for the sale and purchase of goods, titles, currencies and other valuables whereof there is a price list or a price set out by the state authorities, as long as the ordering party has not decided differently, within the same amount, set out at the moment of enforcing the order, the property items he has to purchase or that he has to buy for the property items he shall sell, by way of preserving his entitlement to a brokerage fee.

Reference provision

Article 944

The provisions regarding the ordering shall apply even to the commission, as long as this chapter does not provide for differently.

CHAPTER XII
FORWARDING AGENCY

Contents

Article 945

The forwarding agency contract is an ordering contract wherewith the forwarding agent assumes to be bound to enter into, on behalf and in the account of the ordering party, a transport contract and to accomplish the entire auxiliary arrangements.

Rights and duties of parties

Article 946

As long as the forwarding agent has not entered into the contract with the transporter, the sender may revoke the sending order, by way reimbursing the forwarding agent of the incurred expenses and providing to him an appropriate remuneration for the service provided.

Article 947

With regard to choosing the itinerary, vehicle and ways of transporting the freight, the forwarding agent shall be bound to abide by the instructions of the ordering party and, in lieu thereof, act in accordance with the latter's best interest. The remunerations, price reduction and fee-related benefits achieved by the forwarding agent shall be credited to the ordering party, unless the agreement provides for differently.

Article 948

The remuneration amount for the forwarding agent regarding the accomplishment of the order shall, in lieu of any specific agreement, referring to the professional fees and, in lieu thereof, referring to the local customs where forwarding occurs.

The advance payments and reimbursements for the auxiliary services provided by the forwarding agent shall be defrayed based on the underlying documentation, unless the re-payment or reimbursements have been set out in advance in a lump sum.

Article 949

The forwarding agent undertaking to provide the transport in full or in part with his own or third party vehicles shall assume the rights and obligations of the transporter.

CHAPTER XIII
AGENCY

(Amended by Law no. 121/2013, dated 18.4.2013)

Article 950
General provisions

One party shall, based on the agency contract, undertake to conclude, continuously and against payment, the contract in a certain zone on the account of the other party.

Each party shall be entitled to receive from the other party a copy of the contract signed by them.

Article 951
Exclusiveness

The ordering party shall not have simultaneously more than one agent in the same zone or the same group of customers and for the same field of activity.

The agent shall also not process simultaneously, in the same zone or for the same group of clients and for the same field of activity, the contracts of many enterprises being in competition with each other.

Article 952
The rights and obligations of the parties

The commercial agent shall, in the course of carrying out their activities, attend to the interests of the ordering party and conduct himself appropriately and in good faith in order to perform their obligations. The commercial agent shall specifically:

a) try to negotiate and, as appropriate, enter into the contracts wherewith he has been assigned;

b) impart to the ordering party any necessary information he is in possession of;

c) implement the reasonable instructions issued by the ordering party.

The ordering party shall, in their relations with the commercial agent, act appropriately and in good faith to perform their obligations. The ordering party shall specifically:

a) make available to the commercial agent the necessary documentation pertaining to the contracts in question;

b) ensure for the commercial agent the information necessary for performing the agency contract, specifically informing the commercial agent by a reasonable time period, once they estimate that the volume of contracts shall evidently lower than the one that the commercial agent would normally accept.

The ordering party shall also inform the commercial agent by a reasonable time period regarding the acceptance, rejection or failure to enforce a contract that the commercial agent has ensured for the ordering party.

The parties cannot circumvent the application of the provisions of this Article.

Article 953
Remuneration of the commercial agent

In lieu of any agreement between the parties regarding this issue, the commercial agent is entitled to the remuneration that the commercial agents, designated for the contract making up the scope of his agency contract, normally benefit at the location where he is carrying out his activity. Where such a customary practice is missing, the commercial agent shall be entitled to a reasonable remuneration, taking account of the entire aspects of the contract.

Considered to be a remuneration of the agent shall be the entire elements of the payment that he is benefiting and that is depending on the number or worth of the commercial transactions.

In lieu of such customs, the commercial agent shall be entitled to a reasonable remuneration, taking account of all the elements pertaining to the transaction.

Article 954

The commercial agent is entitled to remuneration regarding the contracts completed during the agency contract:

a) if the contract has been completed as a consequence of his activity;

b) if the contract has been completed with a third party, whom he had acquired as a customer for the contract of the same type;

c) if he has an exclusive right concerning a certain geographic zone or a group of customers and the contract has been performed with a client belonging to this zone and/or group.

Regarding a contract completed following the expiry of the agency contract, the commercial agency shall be entitled to remuneration:

a) if the contract is mainly attributed to their attempts made in the course of the agency contract, regardless whether the contracts have been completed within a reasonable time period, following the expiry of the agency contract; or

b) if the order of a third party has been received by the ordering party or the commercial agent prior to the expiry of the agency contract.

The commercial agent shall not be entitled to remuneration if they owe to the previous commercial agent, unless it emerges out of the circumstances that it is fair for the remuneration to be shared between the commercial agents.

The remuneration shall become due at the moment and to the extent one of the following circumstances emerges:

a) the ordering party has enforced the contract;

b) the ordering party had to have enforced the contract, in compliance with an agreement entered into with a third party;

c) the third party has enforced the contract.

The remuneration shall be granted later if a third party has enforced their part of the contract or would have performed it, if the ordering party had enforced their own part of the contract.

The remuneration shall be paid no later than the last day of the month ensuing after the semester when it becomes due.

The application of this provision to the detriment of the commercial agent cannot be circumvented by way of agreement.

Article 955

The right to remuneration shall lapse upon the condition and at the extent that:

a) it is decided that the contract between the third party and the ordering party shall not be enforced; and

b) failure to enforce is not due to circumstances attributable to the ordering party.

The commercial agent shall pay back the reimbursement he has received as long as such right does not persist any longer.

The application of this provision cannot be avoided by way of an agreement to the detriment of the commercial agent.

Article 956

The ordering party shall submit to the agent an account extract of the remunerations belonging to him, no later than the last day of the month ensuing the semester, where they become due. The account extract shall indicate the essential elements, on which basis the calculation of remunerations has been made.

The agent shall be entitled to obtaining the entire information, specifically an extract of the accounting books, being available to the ordering party and necessary to verify the amount of paid remunerations. The application of this provision cannot be avoided by way of an agreement to the detriment of the commercial agent.

Article 957
Ending and terminating the agency contract

Where the agency contract limited to a certain duration continues to be implemented by the parties even following the expiry of its time period, it shall be transformed into a contract of indefinite period. Where the agency contract is of indefinite period, each of the parties may withdraw from this contract, by way of notifying the other party in advance within a certain time period.

The preliminary notice period cannot be shorter than one month during the first year of the contract duration, two months for the current second year, three months for the third current year, 4 months for the fourth year, 5 months for the fifth year and 6 months for the sixth year and for the entire ensuring years. Where the parties agree of longer notice

periods, the notice period to be abided by the ordering party shall not be shorter than the time period to be abided by the agent. Except where the parties have determined differently by way of an agreement, the end of the notice period shall coincide with the last day of the calendar month. The same rules shall apply even for the agency contract of a definite period, transformed into a contract of indefinite period, provided that, in calculating the notice period, account shall be taken of the previous period.

Upon the expiry of the agency contract, the ordering party shall be bound to pay to the agent a proportional remuneration, if:

a) the agent has acquired new customers for the ordering party or has developed considerably the contracts with the existing customers and the ordering party has still considerable benefits emerging out of the contracts with these clients;

b) the payment of such remuneration is fair, taking account of all the circumstances, specifically the remuneration that the commercial agent forfeits and emerging out of the transactions with these customers, as well as due to constraining their professional activities, attributed to the existence of a non-competition clause.

The remuneration amount may not exceed an amount equal to the annual remuneration calculated out of the annual average of remunerations acquired by the commercial agent during the recent five years. Where the contract extends over a period shorter than five years, the remuneration shall be calculated over the average of the contract period. The acquisition of the remuneration shall not exempt the agent from the right to eventual reimbursement of damages.

The commercial agent shall be entitled to the reimbursement of the damage having sustained as a consequence of terminating the relations with the ordering party.

This damage emerges specifically where the termination of the contract has occurred under the circumstances:

a) depriving the commercial agent of the remuneration that he might have acquired upon the appropriate performance of the contract, ensuring concurrently considerable profits to the ordering party with regard to the activity of the commercial agent; and/or

b) depriving the commercial agent of the possibility to have the costs and expenses he has incurred for performing the contract, under

the instructions of the ordering party, reimbursed.

The right to reimbursement also emerges where the agency contract ends as a consequence of the death of the commercial agent and it may be sought by his heirs. The commercial agent shall forfeit the right to reimbursement as long as, within a year of the end of the contract, he does not communicate to the ordering party his intention to have his rights represented.

Article 958

No remuneration shall be paid where:

a) the ordering party terminates the contract due to a failure in performance being attributed to the agent, which justifies an immediate termination of the contract;

b) the agent terminates the contract, unless the termination is justified by circumstances being attributed to the ordering party, or due to the age, incapacity or sickness of the commercial agent, whereof he may not reasonably be required to pursue his activity;

c) the agent does not assume personally the rights and obligations he is bound to under the agency contract, but assigns them to a third party.

Article 959

The parties cannot, to the detriment of the commercial agent, avoid the application of Articles 957 and 958 prior to the ending of the contract.

Article 960

The agreement providing for a restriction of the professional activities of the commercial agent following the end of the contract shall be referred to as the clause of non-competition.

The agreement of non-competition shall be valid if concluded in writing. It shall belong to a geographic zone or group of clients, assigned to the commercial agent, as well as the type of contracts where of the commercial agent was assuming representation, under the agency contract.

The non-competition clause shall be valid for a period no longer than 2 years from the date of the end of the contract.

Article 961
Guarantee agreement signed up by the agent

An agreement whereof the agent guarantees that a customer shall pay the price of goods falling under the scope of the contract, which he has negotiated or concluded, shall be valid, provided and to the extent it has been done in writing, covers just the contracts specifically referred to in the agreement and is reasonable regarding the interest of the parties, specifically regarding the amount of remuneration benefitted by the agent. The amount offered as guarantee shall not be bigger than the remuneration that the agent would benefit under this contract.

CHAPTER XIV
ASSIGNMENT OF PROPERTY TO CREDITORS
GENERAL PROVISIONS

Article 962

The assignment of property is the contract wherewith the debtor binds his creditors or some of them to defray for all or some of his activities to distribute among themselves the proceeds to the effect of satisfying their claims.

Article 963

The assignment of property shall occur in writing, otherwise it is not valid.

Where claims are among the assigned properties, the provisions of Articles 502 and 503 of this Code shall apply.

Article 964

The administration of the assigned property shall be incumbent on the respective creditors. They may file lawsuits for all the property related issues connected to that property, including the properties for maintaining the possession.

Article 965

The debtor may not dispose of the property items being assigned to the creditors.

The creditors, whose claims existed prior to the assignment of property and failing to intervene, may seek enforcement over the entire property.

The creditors having been assigned the property may not, as long as the assignment encompasses just some activities of the debtor, seek the enforcement for other activities prior to the defrayment of those related to the assignment of property.

Rights and obligations of parties

Article 966

The creditors having concluded the contract or acceding to it shall pay in advance the necessary expenses for the liquidation and shall be entitled to acquire the amount out of the proceeds of liquidation.

Article 967

The creditors shall share among themselves the proceeds proportional to their respective claims, except the cases of preferences. The remainder shall belong to the debtor.

Article 968

The debtor shall be entitled to check the administration and obtain an account of the financial situation upon the completion of liquidation, or at the end of each year if the administration lasts more than one year.

Where a receiver has been appointed, the latter shall make available the account also to the debtor.

Article 969

The debtor shall be relieved of his creditors on the day when they receive their pertinent share out of the liquidation proceeds and to the extent of the amount they have acquired, unless a contrary agreement exists.

Article 970

The debtor may withdraw from the contract by undertaking to defray the dues and interests to those he has entered the contract with or having acceded to the contract. The withdrawal shall be of effect on the payment day.

The debtor shall be bound to pay for the expenses of the agency of necessity.

Termination of contract
Article 971

The contract may be terminated if the debtor has, after declaring that he is assigning his entire property, hidden a considerable pert of it, or if he has hidden the losses or has asserted losses which did not exist.

Article 972

The contract may be terminated due to failure to perform under the general rules.

CHAPTER XV
BROKERAGE

Contents

Article 973

Broker shall be the one arranging for the contact of two or more parties for concluding an agreement, without being related to any of them in cooperation, dependency or representation relationship.

Remuneration

Article 974

In lieu of any agreement or where the professional fees or the customs do not provide for any determination, the amount of remuneration and the proportion thereof weighing on each of the parties shall be set out by the court.

Rights and obligations of parties

Article 975

The right of the broker to remuneration shall emerge upon the brokerage contract yielding its effects, regardless of the subsequent occurrences.

The above paragraph shall not apply upon the brokerage contract being established invalid and the broker being aware of the invalidity grounds.

Article 976

The broker shall be entitled to being reimbursed regarding the expenses from the person on whose behalf the expenses have been incurred even if the agreement has not been completed, unless the agreement or customs provide for a different solution.

Article 977

The agreement being concluded upon the involvement of many brokers, each of the latter shall be entitled to a remuneration amount.

Article 978

The broker shall inform the parties of the circumstances he is aware of and bearing a connection to the evaluation and certainty of the agreement, which might have an impact on its conclusion. The broker shall be liable for the authenticity of the signature on the documents and for the last assignment of titles transmitted through him.

Article 979

The tasks of the professional broker regarding the agreements for goods or titles shall be:

1. To preserve the types of the goods sold by way of samples, as long as the possibility of dispute regarding the identity of goods persists.

2. to make available to the purchaser a signed list of titles whereon discussion focused, indicating the serial and number.

3. to note down on the respective book the main data of the contract, pertaining to his involvement and, make available copies of each such note signed by him to the parties.

Article 980

The broker may be assigned by one of the parties to represent them in transactions regarding the implementation of the contract being entered into upon his involvement.

Article 981

The broker not disclosing the name of one contractor to the other shall be liable for the implementation of the contract and, upon implementing it, shall assume the rights towards the undisclosed contractor.

Where, following the conclusion of the contract, the undisclosed contractor appears before the other party or they are disclosed by the broker, each of the contractors may file a lawsuit directly against the other, however, not affecting the liability of the broker.

CHAPTER XVI
SAFEKEEPING

GENERAL PROVISIONS

Article 982

Safekeeping is a contract wherewith one party takes over from the other a movable property item, being bound to safekeep it and to return it in kind.

Article 983

The safekeeping contract shall be considered to be concluded at the moment the property item is handed over for safekeeping.

Article 984

The safekeeping shall be presumed to be against remuneration, unless the professional capacity of the safekeeper or other circumstances indicate a different will of the parties.

Rights and obligations of parties

Article 985

The safekeeper shall keep the property item diligently. He may not use it himself nor give it over to other, in lieu of the consent of the depositor. Upon using the property item in lieu of the consent of the depositor, he shall be liable for the loss or harm to it up to the casual occurrence.

Where urgent circumstances so require, the safekeeper may assume safekeeping in a way different from the contract, by way of giving immediate notice to the depositor at the earliest opportunity.

Article 986

The safekeeper shall be bound to give back the property item left in safekeeping at any time that the depositor is seeking, even it a deadline has been set for its return, unless the deadline has been set to the benefit of the safekeeper.

Returning the property item left in safekeeping shall occur at the location where the property item had to be safekept, where, except the performance of parties, the return shall occur upon the expenses of the depositor.

Article 987

Where the safekeeping is free of charge, the court may reduce the extent of damages.

Article 988

The depositor shall be bound to pay to the safekeeper the entire expenses incurred for safekeeping the property item, as long as they have not been included in the remuneration.

Article 989

No deadline being set out for the return of the property item left in safekeeping, the safekeeper shall at any time be entitled to seek his release from the liability of safekeeping the property item, by way of giving notice to the depositor to take back the property item within a reasonable period which he sets out on his own.

Article 990

The depositor shall be bound to reimburse the damage which the safekeeper has sustained due to the hidden flaws of the property item, as long as he did not notify thereof the safekeeper although the he was aware of them.

Article 991

Where the depositors of the property item are more than one and they do not agree regarding the return, it shall be decided by the court.

This is the way of procedure even upon a sole depositor being succeeded by many heirs, as long as the property item is not divisible.

Where the safekeepers are more than one, the depositor shall be entitled

to seek the return from the person keeping the property item, the latter being bound to notify thereof the others.

Article 992

Where the property has been deposited even in the interest of a third party and the latter has informed the depositors and safekeepers of his acceptance, the safekeeper shall not be released through returning the property item to the depositor, in lieu of the consent of the third party.

Article 993

The safekeeper shall be bound to return the fruits of the property item, which he has harvested.

Article 994

The heir of the safekeeper having alienated the property item in good faith, being unaware that it should be safekept, shall be bound just to give back the remuneration he has received.

Where this payment has not been done yet, the depositor shall assume the rights of the alienator.

Article 995

The safekeeper shall return the property item to the depositor or persons assigned to take it over, ignoring the need for the depositor to establish him being the owner.

Where the safekeeper is being sued by a person revendicating the ownership over the property item or claiming having titles over it, the safekeeper shall make this dispute known to the depositor and seek to be exempt from the proceedings by way of indicating the person, otherwise he has to pay damages. In such a case he may be released of his obligation to return the property item, by way of depositing it in the ways set out by the court, upon the expenses of the depositor.

Article 996

Where the safekeeper is precluded of safekeeping as a consequence of a fact he is not culpable, he shall be released from the obligation to return the property item, however, he has to give notice to the depositor of the fact due to which he has lost safekeeping the property item, otherwise he shall pay the damages.

The depositor shall be entitled to acquire what the safekeeper has already ensured as a consequence of the fact and he shall assume the rights belonging to the latter.

Article 997

The credits emerging out of the safekeeping to the benefit of the depositor shall prevail over the property item given out to safekeeping. The safekeeper may withhold the property item, which has been encumbered, until he is reimbursed for his credit and he may sell it under the provisions regulating the lien.

Article 998

Where the property item given out to safekeeping has not been withdrawn by the deadline set out in the contract or following the notice given by the safekeeper, the latter shall not be liable for the loss or harm to the property item occurring following the expiry of the deadline, unless the loss or harm has been caused intentionally or due to grave negligence.

The safekeeper shall, in the above instances, be entitled to seek from the court to grant selling the property item given out to safekeeping under the foreclosure rules.

The proceeds out of the sale of the property item shall, following the deduction of the amounts owed to the safekeeper, be given to the depositor or they shall be deposited on his behalf in the bank.

Reference provision

Article 999

Where falling under the scope of safekeeping are an amount of money or other equal legal tender with the safekeeper having the right to use them, he shall acquire ownership and shall be bound to repay them in the same amount and out of the same kind and quality.

The provisions regulating the loans shall apply in such an instance, as long as they do not run counter the provisions regulating safekeeping.

A. SAFEKEEPING IN GENERAL STORES

Article 1000

The general stores operating as safekeepers shall be liable to store the property items being safekept, unless it is established that the harm has emerged due to accidental incidence, nature of property items or defects of property items or wrapping.

The safekeeper shall, in each case, carry out the necessary activities to restrict the damage.

Article 1001

The safekeeping store shall store the safekept property items separated from each other, while assigning to them distinction marks to indicate the belonging of the property item to the depositor.

Provided the explicit consent of the depositor, they shall not mix up among themselves property items as equal legal tender of the same type and quality.

The depositor shall be entitled to inspect the safekept property items and withdraw the samples of use.

Article 1002

Upon the general stores issuing a representation title for the safekept property items, the safekeeper shall give the property items back to the creditor being legitimised based on such title.

Article 1003

The general stores may, upon giving notice to the depositor, start with selling the property items with a higher price, where, upon the expiry of the contract duration, the property items have not been withdrawn, or safekeeping has not been renewed, and always where the property items are running the risk of getting lost or consisting a considerable risk for the safety of the locations where they have been stored.

The proceeds out of the sale shall, following deduction of the cost and remaining expenses of the safekeeping, be handed over to the depositor immediately.

B. SAFEKEEPING IN HOTEL

Article 1004

Hotel owners are liable for the harm, destruction or loss of property items that the clients have brought to the hotel.

Considered brought to the hotel shall be:

1. the property items which are there during the time the client is accommodated there.

2. the property items that the hotel owner, a member of his family or his assistant undertake to keep, outside the hotel premises and during the time period that the client is accommodated.

3. the property items that the hotel owner, a member of his family or his assistant undertake to keep inside or outside the hotel premises, for a reasonable time, prior or after the client has checked in.

The liability referred to by this Article shall be restricted to the worth of that which has been stolen, harmed or lost up to the equivalent of hundred times the rent price of accommodation for one day.

Article 1005

The liability of the hotel owner is unrestricted, if:

1. the property items have been handed over for safekeeping.

2. he has refused to take over safekeeping property items which he was bound to accept. The hotel owner shall be bound to accept the securities, cash or items of value; he may not accept to take them over if it is about dangerous items or, taking account of the significance and administration terms of the hotel, are of significant worth or of major dimensions.

The hotel owner may require that the item being given over be wrapped up and sealed.

Article 1006

The hotel owner shall not be liable if theft, harm or loss emerge out of:

1. the client, persons accompanying him, serving him or visiting him.

2. force major.

3. nature of items.

Article 1007

The hotel owner failing to invoke the restrictions provided for in the last paragraph of Article 1004 shall be liable if the theft, harm or loss of property items brought by the client to the hotel have been caused culpably by him, members of his family or his assistants.

Article 1008

In addition to the case provided for in Article 985, the client cannot avail of the above provisions as long as, following the finding of theft, harm or loss, he notifies the fact to the hotel owner with an unjustifiable delay.

Article 1009

The agreement or statements aiming at exempting or restricting the liability of the hotel owner in advance shall be invalid.

Article 1010

The above provisions shall not apply to the vehicles, items left therein or living animals.

Article 1011

Regarding the assessment of liability or setting out the limit of reimbursement, the provisions for safekeeping in hotels shall apply even to the entrepreneurs of public and private health care clinics, institutions for public performances, resort houses, hotels, pensions, restaurants and in all the cases which, due to the specific activity carried out by the entrepreneur, the client cannot take personal care of safekeeping the property items.

Article 1012

The claims of the hotel owner regarding the reimbursement affected to the clients shall have encumbering title over the property items brought by them to the hotel in their possession and continuing to be there.

The encumbering title shall be of effect even to the detriment of the third parties having titles over these property items, provided that the hotel owner was knowledgeable thereof at the time when the items were brought to the hotel.

CHAPTER XVII
CHECKING ACCOUNT

Article 1013

The checking account is a contract wherewith the parties are bound to register the mutual crediting transactions in an account, considering it non-disposable and non-repayable until the account is closed.

The remainder of the account shall be repayable upon the expiry of the term. Where the payment has not been requested, the remainder shall be renewed for an indefinite period.

Article 1014

The credits, which cannot be reimbursed, shall be exempted from the checking account.

Where the contract is in place between entrepreneurs, the foreign credits for the respective ventures shall be exempted from the account.

Article 1015

The interest accruing on the respective balance shall be paid at the extent set out in the contract and, in lieu thereof, by the law, however, always within the limits set out by law.

Article 1016

The commission and expenses incurred by the procedures related to depositing shall be paid regarding the checking account. These rights are not part of the account, unless the agreement provides differently.

Article 1017

Including a credit into the checking account does not exclude the right to file a lawsuit and other rights connected to the transaction wherefrom the credit is emerging.

Upon the above transaction being invalid or declared as such or terminated, the respective amount of money shall be excluded from the checking account.

Article 1018

Where the credit included in the account has been secured by real or personal guarantee, the client shall be entitled to use this guarantee for the existing surplus to his benefit from the closing of the account to collecting the guaranteed credit.

The above paragraph shall apply even if a joint liability exists for the credit.

Article 1019

Unless the parties have provided for differently in the contract, inclusion of a credit towards a third party in the checking account shall be assumed to have been made upon the condition of payment. Where the credit is not repaid, the recipient shall be entitled to proceed with the collection, taking the cash amount from the account, by reintegrating the one having made the depositing. This amount of money may be taken from the account even after unsuccessfully attempting to assume the rights towards the debtor.

Article 1020

Where the creditor of a client has affected the attachment of the eventual remainder of the account belonging to hid debtor, the other client cannot affect the rights of the creditor through new depositing. The depositing made in connection with the rights emerging prior to the attachment shall not be considered to be new depositing.

The client to whom the attachment or lien has been encumbered must give notice to the other party. Each of them may withdraw from the contract.

Article 1021

Closing the account by way of defraying the remainder shall occur upon the expiry of the time periods set out in the contract and, in lieu thereof, upon the expiry of each 6-month period calculated from the date of entering into the contract.

Article 1022

The transfer of transactions to the account from one client to another shall be implied to be admitted as long as it has not been objected by the deadline set out by the parties or by the deadline, which may be

considered appropriate referring to the circumstances.

The admission of the transaction does not include the right to object it due to writing or calculation mistakes, omissions or duplications.

The objections shall occur within 6 months of the date of the transfer of the account, regarding the liquidation and closing, which shall be sent by recorded mail. Reinstatement shall not be allowed.

Article 1023

Where the contract has been entered into for an indefinite period, each of the parties may be withdrawn from the contract in each closure of the contract, by way of giving at least a 10-day notice. In the event of Theban of carrying out this activity, incapacity to act, insolvency or death of one of the parties, each of them, or their heirs, shall be entitled to withdraw from the contract.

The termination of the contract shall prohibit including other amounts into the account, however, the payment of the remainder cannot be sought only after the expiry of the period foreseen in Article 1021.

CHAPTER XVIII
BANK CONTRACTS

A. BANK DEPOSITS

Article 1024

Upon an amount of money being deposited with a bank, the latter acquires the ownership thereon and it shall be obliged to return it in the same currency, upon the expiry of the time period being set out or upon the request of the depositor, taking account of the notice period determined by the parties or banking customs.

Article 1025

Upon the bank issuing a savings bankbook, the depositing and withdrawals shall be noted down in the bankbook.

The notes on the bankbook signed up by the bank employee, assigned to provide this service, consist conclusive evidence between the bank

and the depositor.

Any contrary agreement shall be invalid.

Article 1026

Where the savings bankbook is payable to the holder, the bank providing the service to the possessor, unintentionally and not gravely culpably, shall not be liable even if he is not the depositor. The same provision shall also apply to the case where the bankbook of the deposit payable to the holder has been issued in the name of a certain person.

The provisions of separate laws are herewith excluded.

Article 1027

The bank admitting and receiving the deposits of the titles under administration shall preserve the titles by way of collecting the interests and dividends, verify the trading in connection with the price or repayment of capital, being diligent for collecting the income in the account of the depositor and generally taking care of the rights pertaining to the title. The collected amounts shall be credited to the account of the depositor.

Where an option right shall be assumed regarding the deposited titles, the bank shall request the necessary instructions of the depositor in time and implement them, if, as appropriate, it has taken the necessary funds. In lieu of such instructions, the option rights shall be sold through the exchange agents on the account of the depositor.

A remuneration at the extent set out in the agreement between parties or the one ordinarily applied shall belong to the bank, in addition to the payment of expenses sustained by it.

Any agreement excluding the bank from safekeeping and administering the titles with a reasonable care shall be invalid.

B. BANKING SERVICE AND SECURITY SAFES

Article 1028

The bank shall, with regard to the security safes services, be liable towards the user regarding the solvency, maintaining the premises and inviolability of the safe, except any casual incidence.

Article 1029

Where the safe is in the name of many persons, access to it shall be acknowledged to each of them unless a contrary agreement exists.

In the event of death of the sole holder or one of these holders, the bank having received the notification may allow the opening of the safe with the agreement of all those being entitled, or in the way determined by the court.

Article 1030

Upon the expiry of the contract period, the bank may, following a notice to the holder or after six months of the expiry, seek from the court authorisation to open the safe. The notification may also occur through registered mail with confirmation.

Opening shall occur at the presence of a notary taking account of the measures that the courts deems necessary. The court may order taking the necessary measures for safekeeping the items found therein, including the sale of some of them, which is necessary to reimburse the expenses sustained by the bank.

C. OPENING THE BANK CREDIT

Definition

Article 1031

Opening the bank credit is a contract wherewith the bank is bound to keep available an amount of money for the other party, for a definite or for an indefinite period of time.

Article 1032

Notwithstanding a different agreement, unless otherwise agreed upon, the credit borrower may use the credit for a couple of times, according to the usage format and he can, by way of further depositing, reinstate his disposability.

Depositing and withdrawals shall occur at the bank where this relationship has emerged, unless it has been provided for differently by the parties.

Article 1033

Where for opening the credit real or personal security has been provided, this does not lapse due to the fact that the credit borrower ceases to be a bank debtor at the moment of ending this relationship. Where the security becomes insufficient, the bank may require a supplemental security or replacement of the guarantor.

Where the credit borrower is not abiding by the requirements, the bank shall reduce the credit proportionally to the extent of reduction of the worth of security or may withdraw from the contract.

Article 1034

The bank cannot withdraw from the contract prior to the expiry of the contract period, except in reasonable cases, or where a different agreement exists. The withdrawal terminates immediately the use of credit, however the bank shall determine a deadline at least of fifteen days for the repayment of the used or additional amounts.

Where granting of credit is for an indefinite period of time, each of the parties may withdraw from the contract through a notice within the period set out in the contract, which is usually applied or, in lieu thereof, within fifteen days.

Ç. BANK ADVANCE PAYMENT

Disposal of pawned property items

Article 1035

In the context of bank advance payment on the lien over the titles or goods, the bank cannot dispose of the property items whereon the lien has been imposed, as long as it has issued a document wherewith these items have been individualised.

A contrary agreement needs to be established based on documents.

Article 1036

The bank shall, on behalf of the contractor, make arrangements for insuring the goods under lien encumbrance, as long as, taking account of their nature, worth and location, the insurance falls under an ordinary maintenance.

Article 1037

The bank shall, in addition to the obligations it is bound to, be entitled to have the expenses it has incurred for maintaining the goods and titles reimbursed, unless it has committed itself to it.

Article 1038

The contractor may, prior to the expiry of the contract period, withdraw the titles and goods under lien encumbrance, by way of making a proportional payment between the amounts received as advance payment and the other amounts belonging to the bank under the above article, as long as the credit surplus turns out to be covered insufficiently with security.

Article 1039

Where the worth of security is reduced by at least one tenth as compared to its worth at the moment of entering into the contract, the bank may require the debtor an additional security, warning him that upon failure to do so it will proceed with the sale of these goods or titles under lien encumbrance. Where the debtor does not abide by the requirements, the bank may proceed with the sale under the provisions on pawn.

The bank shall be entitled to the immediate payment of the account surplus, which has not been fully covered by the proceeds out of sale.

Article 1040

Where money deposits, goods or titles, which have not been individualised, or whereof the bank has been granted the opportunity to dispose of have been frozen with the securities of one or more credits, the bank shall repay just the amount or a part of the goods or titles exceeding the amount of guaranteed credits. This surplus shall be determined in connection with the worth of goods or titles at the time of the expiry of the credits.

D. BANK TRANSACTION IN CHECKING ACCOUNTS

Article 1041

Where the deposit, opening the credit or other bank transactions have been accommodated in the checking account, the client may dispose at

any time of the amounts credited to him, unless the deadline reserve has been provided in the agreement.

Article 1042

Between the bank and the client existing a couple of relations or accounts in different currencies, the active and passive surplus shall be mutually be set off, unless a contrary agreement exists.

Article 1043

Where the liquidating account is in the name of many persons, entitled to carry out transactions even individually, these persons shall be referred to as contributory creditors or debtors of the accounts surpluses.

Article 1044

Where the transactions in checking accounts are for an indefinite period, each of the parties may withdraw from the account, giving notice to the other party within the time period set out in the contract, or, in lieu thereof, within 15 days.

Article 1045

The bank shall be liable according to the provisions regulating the works and services contract for performing the obligations assumed by the depositor or another client.

Where this obligation has to be performed where no bank branches exist, it can assign the enforcement to another bank.

Article 1046

Articles 1016, 1019 and 1022 shall also apply to the checking account.

E. BANK DISCOUNT

Definition

Article 1047

Discount is the contract wherewith the bank, by way of applying the debt interest rate, grants the client the worth of the credit to third parties, which has not ended yet, by way of cession.

Discount of bill of exchange

Article 1048

Where the discount occurs by way of redeeming the bill of exchange or bank check, the bank shall, if payment is nod made, enjoy, in addition to the rights stemming from the title, the right to repayment of advance payment.

The provisions of specific laws regarding he check and bill of exchange shall me maintained.

Article 1049

The bank having discounted the documented bills of exchange shall enjoy the same preference over the goods as the recipient has, as long as the representative title is under their possession.

CHAPTER XIX
LOAN

Article 1050

By way of a loan contract one party (lender) grants to the other party (borrower) ownership over n amount of money, or property items determined in number, weight or measure and the borrower shall be bound to repay to the lender the same amount of money, return the same amount of property items of the same type and quality, by the deadline set out in the contract or, where no deadline has been set out, upon the request of the lender.

The Joint Colleges of the Supreme Court in the unifying decision no. 932, dated 22.06.2000, have reasoned regarding the loan contract, determining that:

> In any case, in a loan contract, the lender does not have the right to intervene in the way the borrower manages or uses the borrowed money. In this contract, the lender has the right to request only the return of the loaned amount, as well as the stipulated interest, if the borrower has assumed such an obligation. Any eventual risks arising from the management of the borrowed amount, its investment, or any other legal actions taken by the borrower with this amount for the purpose of increasing profits, always fall on the borrower.

Article 1051

Unless provided for differently in the agreement between the parties, the borrower shall pay the interest amounts to the lender.

The interest amounts, whereon it has been agreed, shall be paid each year, unless the parties have agreed differently.

Failure to pay the interest amounts consists an essential failure to perform the obligation.

The Joint Colleges of the Supreme Court in the unifying decision no. 932, dated 22.06.2000, have reasoned regarding the maximum limit of interest rates in the loan contract, determining that:

> [...] Our Civil Code does not set a maximum limit for the allowable interest rates, as is stipulated in the legislations of other countries. It has accepted the principle of complete freedom of contracting and competition according to market rules. This is the most correct stance for a free market of goods, money, and capital, where the "rules of the game" are respected. However, in a market that is distorted and dominated by interventions from illegal and even criminal factors, such as fraudulent pyramid schemes, it is not about freedom of contracting, but rather the opposite.
>
> The maximum limit of allowable interest rates in the relevant legislation serves as a barrier to avoid contracts with conditions that could lead to disproportionate loss or harm to the interests of the contracting parties. Since the provisions in the special part of the Civil Code of the Republic of Albania (which regulate loan contracts) do not specify the maximum allowable interest rate, it then becomes more necessary to refer to the general and fundamental provisions related to the economic nature of obligations and the fairness of the participants. According to Article 422 of the Civil Code, "The creditor and the debtor must treat each other with fairness, impartiality, and according to the requirements of reason". The content of this provision and those that set the general conditions for contracts leads to the conclusion that even the freedom to contract is not absolute.
>
> It can, however, be "limited" by some economic and moral factors, such as those mentioned in the cited provision, which the court should consider when resolving any specific case. Ignoring these factors leads to a lack of proportionality, or, as the legislator states,

to disproportionate harm to the interests of the contracting party, meaning that the will (consent) of that party was not entirely free.

[...]

In the case under review, the loan contract with interest is, in itself, a lawful and valid legal action. The general condition that is invalid, according to Article 686/2 of the Civil Code, is the part of the interest that exceeds the limit allowed by economic logic, reason, and morality, as analyzed above. In such cases, courts should bear in mind the well-known rule that invalid parts do not necessarily make the entire legal action invalid.

[...]

Ultimately, the Joint Colleges reach the conclusion that under Article 686/2 of the Civil Code, the loan contract [...] should be considered invalid in the part of the interest percentage that should have been paid by the end of the year, since, as stated above, a lawful activity cannot generate income for which such high interest rates are paid.

[...] The Joint Colleges deem that the legal action, the loan contract [...] should be considered valid except for the part regarding the interest, leaving the debtor plaintiff against the defendant for the value of the loan received [...] and for an annual interest rate, equal to the highest interest rate given by banks in Albania at the time of signing the contract.

Article 1052

Where the parties agreed on the repayment of the amount of money or property items in instalments and the borrower does not meet his obligation for the payment of two instalments, or delays the payment of a single instalment for a period of more than three months, the lender may seek he immediate repayment of the borrowed amount of money or return of borrowed items.

Article 1053

Where the return of borrowed property items has become impossible or very difficult due to a reason not attributed to the debtor, the latter shall be obliged to pay for their worth, taking account of the time and the location where the return would occur.

Article 1054

The lender shall be liable for the harm he has caused to the borrower regarding the flaws of the property items being borrowed, as long as he does not establish that it was not his fault that he was not aware of them.

Where the loan was free of charge, the borrower shall only be liable where, although he knew the flaws, he did not inform the lender thereof.

Article 1055

Whoever promising to grant a loan may refuse meeting this obligation, as long as the property situation of the other party are such that they make it difficult to repay and the lender has not been granted appropriate guarantees.

CHAPTER XX
FRANCHISING

Definition

Article 1056

The franchising contract contains a relationship of continuous obligations wherewith independent enterprises are bound to each other to encourage and develop the commerce jointly, provide services, performing specific obligations.

Obligations of franchisor

Article 1057

The franchisor shall be bound to make available to the franchisee an entirety of standardised of immaterial rights, models, diagrams, profit, trading and organisation ideas, other appropriate knowledge for the development of commerce. While he shall be obliged to preserve this program of obligations against the intrusion of third parties, develop it constantly and support its implementation by the franchisee byway of instructions, information and improvements.

Pre-contractual relations

Article 1058

In the context of negotiations to conclude the contract, the parties shall show to each-other the situation of the commercial affairs bearing a connection with the franchise contract and specifically with the program of franchise obligations, as well as inform each other based on the principles of good faith. They shall be obliged to keep the secrecy of the confidential information, even if the contract is not concluded.

Anyone violating this obligation shall be obliged to pay the damages. This right shall lapse upon the expiry of a three year period since the day of the end of negotiations.

The party having participated at the negotiations may seek the reimbursement of the expenses incurred based on legitimate trust in concluding the contract, which as not concluded due to a malicious conduct by the other party.

Form of contract

Article 1059

The franchising contract shall be documented while, inter alia, containing an agreed definition of the mutual relations of parties, contract duration and other essential elements of the contract. The text of the contract shall contain a full description of the franchise obligations program.

Withdrawal from the contract

Article 1060

The duration of the contract shall be determined upon the agreement of the parties, while abiding by the requirements imposed by the commerce and respective services.

Where no period has been set out in the contract or the period is longer than ten years, each of the parties is entitled to withdraw from the contract, by way of giving the other party a one year notice.

In the event of termination of the contract as a consequence of the expiry of the time period or an withdrawal from it and prior to the submission of the respective report on the affairs, the parties, being oriented by the principles of good faith, shall endeavour to agree on the renewal of the contract under the same or different conditions.

Ban of competition

Article 1061

Even after the end of the contractual relations, the parties are mutually obliged to a fair competition.

On this basis, the franchisee may be imposed a ban of local competition for a time period of up to one year.

Where a restriction of their professional activity emerges due to the ban of competition, the franchisee shall be granted an equivalent financial reimbursement, notwithstanding the termination of the contract.

Liability of the franchisee

Article 1062

The franchisor shall be liable for the existence of the rights and knowledge of the franchise obligations program. Where the rights do not exist or where the franchisor violates other franchise obligations culpably, the franchisee shall be entitled to reduce the remuneration. The reduced amount shall be decided authoritatively by an impartial expert. The franchisee may seek the reimbursement of the damage being caused by the non-existence of the elements of the program of obligations and by the culpable violation of the contract by the franchisor.

Article 1063

The franchisor may seek the reimbursement of the damage caused by the culpable violation of the contract, specifically due to the inappropriate implementation of the franchise obligations program by the franchisee.

Relinquishment

Article 1064

In the event of the violation of contractual obligations putting the purpose and conduct of commerce at risk, the contracting party shall be entitled to relinquish the contract, without any reference to the deadline.

CHAPTER XXI
LIFE ANNUITY CONTRACT

Article 1065

The lie annuity may be created against remuneration (by way of lien) through the alienation of movable or immovable properties or an amount of money.

The life annuity may be created even by way of donation or last will, thus abiding by the requirements of the law for such legal transactions.

Article 1066

The life annuity may be granted for the entire life of the beneficiary or another party. It may be created even for the whole life on one or more persons.

Article 1067

Where the life annuity has been created to the benefit of many persons, the share of a deceased beneficiary shall be added to the benefit of others, unless a different agreement exists.

Article 1068

The life annuity contract entered into to the benefit of one person, who at the time of the contract was dead, shall be invalid.

Impact of life annuity contract

Article 1069

The person to whose benefit the life annuity has been created by way of lien may seek the termination of the contract, as long as the issuer does not provide the security or reduces the security provided for in the agreement.

Article 1070

Failure to pay the due instalments of the life annuity does not entitle the person, to whose benefit the annuity has been created, to seek the termination of the contract; however, he may only seek the attachment and sale of all the property items of the debtor, and an amount of the

proceeds out of the sale shall be used to ensure the payment of annuity.

Article 1071

The annuity debtor shall not be relieved of his obligation for its payment even if he offers for the repayment of the amount of money or return of the received item, be it even through relinquishing the repayment of the paid instalments.

He shall be bound to pay the annuity for the entire period that it has been created, regardless of the gravity of annuity obligation, unless a different agreement exists.

Article 1072

The life annuity shall be granted to the person, to whose benefit it has been created, proportional to the number of the days he has lived. In case the agreement provides for the advance payment in instalments, each of them shall be acquired on the day that the payment period expires.

Article 1073

Where the life annuity is created on the basis of a title without remuneration, it may be provided (determined) that this is non-attachable.

CHAPTER XXII
SIMPLE COMPANY

GENERAL PROVISIONS

Article 1074

The company is a contract wherewith two or more persons agree to carry out an economic activity to the effect of sharing the profit emerging thereof.

The person being a company member shall make available to this activity money, property items or services.

Article 1075

In the event of a simple company, the contract shall not be subject to any

specific form, unless it is required due to the nature of property items being pooled.

The company is simple if it does not demonstrate distinguishing features of the commercial companies regulated in the Commercial Code.

Relations among members

Article 1076

The member shall be bound to pay the contributions set out in the contract of the company. It is assumed that the members shall be obliged to contribute in equal shares, to the extent necessary for attaining the purpose of the company, unless the contract provides for differently.

Article 1077

The company contract maybe amended only upon the consent of all the partners, as long as they have not agreed differently.

Article 1078

The security sought by the member and the subrogation of risks for the property items, whereon the ownership has been granted, shall be regulated in the provisions on the sale.

Article 1079

The member having contributed in credit shall be liable regarding the insolvency of the debtor, within the limits referred to in Article 506 of this Code regarding the case of acquiring the security upon agreement.

Article 1080

Unless the agreement provides for differently, the administration of the company shall be belong to each of the members, separate of others.

Where the administration belongs separately to many members, each of them shall be entitled to object the action with is intended to be carried by another, prior to being accomplished.

The majority of the members set out referring to the share of each member in the profit shall resolve the disputes.

Article 1081

Where administration belongs jointly to a number of members, the consent of the entire administering partner shall be necessary for the commission of the actions of the company.

Upon being decided that for the administration or for certain actions the consent of the majority is needed, this shall be determined under the last paragraph of Article 1080.

In the instances provided for in this Article, the specific administrations cannot carry out any action individually, unless in urgent cases, where a damage threatening the company is to be avoided.

Article 1082

The dismissal of the administration being appointed in the contract of the company may occur for a reasonable ground.

The administrator being appointed by a separate act may be dismissed under the provisions of the works and services contract. The dismissal in such a case may be sought also judicially by each member.

Article 1083

The rights and obligations of the administrators shall be regulated by the provisions on the works and services contract. The administrators shall jointly liable to the company for performing the obligations being assigned to them by law or the contract of the company, unless they establish that they are not culpable.

Article 1084

The members not involved in the administration shall be entitled to be informed by the administrators on the developments regarding the affairs of the company, to be consulted with the documents connected to the administration and be provided with a report subsequent to the works, wherefore the company has been established, being accomplished.

Where the accomplishment of the activity of the company lasts more than one year, the members shall be entitled to be provided with the administration report at the end of each year, unless the contract provides for a different time period.

Article 1085

Notwithstanding a contrary agreement, each member shall be entitled to obtain his share of protects following the approval of the report.

Article 1086

The pertinent shares of members in profits or losses shall be assumed proportional to the contributed amounts. Where the worth of these contributions are not set out by the contract, they shall be determined by the court. Where the contract provides for only the part of each member in the profits, it is, at the same extent, assumed that the participation in the losses should be determined.

Article 1087

Any agreement excluding one or more members from the participation in profits or losses shall be invalid.

Relations with third parties

Article 1088

The company shall acquire rights and commit itself to obligations through the members having the right to represent it.

In lieu of other provisions in the contract, the representation shall be incumbent on any administrator member and extend on all actions falling under the scope of the company. The changes and forfeiture of representation powers shall be regulated by the provisions on the representation.

Article 1089

The creditors of the company may seek their rights referring to the assets of the company. Regarding the obligations of the company, the members having acted on behalf and on the account of the company shall also be severally and jointly liable and, if a different agreement exists, even the other members.

The agreement shall be made known to the third parties through appropriate media and, upon failure of receiving notice, the restriction of liability or exemption from the joint liability may not be referred to for those not being aware of it.

Article 1090

The member required to pay for the obligations of the company may seek, even if the company is in liquidation, the preliminary enforcement on the assets of the company, by way of indicating the property items whereon the creditor may be reimbursed best.

Article 1091

Anyone becoming a member of a previously established company shall be liable along with the other members for the obligations of the company prior to having obtained the capacity of the member.

Article 1092

The respective creditor of the member may, as long as the company lasts, seek his rights over the profits belonging to the debtor, as well as taking preserving (conserving) measures on the share belonging to the latter in liquidation.

Where the other property items of the debtor are insufficient to pay off the credit, the respective creditor of the member may, in addition, seek the defrayment of the share of his debtor. The share may be defrayed within three months of lodging the request, unless the dissolution of the company has been decided.

Article 1093

No set-off between the obligation of a third party to the company and the credit that he has to the member shall be permitted.

Dissolution of the company

Article 1094

The company shall be dissolved:

1. upon the expiry of the time period.

2. upon attaining the objective of the company or upon the impossibility to attain it.

3. upon the will of all the members.

4. due to other grounds provided for in the contract of the company.

Article 1095

The company contract shall be extended implicitly for an indefinite period of time, if, although the time period provided for in the contract has expired, the members continue to carry out the activity of the company.

Article 1096

Following the dissolution of the company, the administering members shall preserve the administration powers just for urgent matters, until the necessary actions of liquidation are undertaken.

Article 1097

Where the contract does not provide for the way of liquidation of the property and the members are not of the same opinion to determine it, the liquidation shall occur by one or many liquidators, being appointed with the consent of all the partners or, in the event dispute, by the court.

The liquidators may be revoked upon the will of all the members and always by the court upon the grounded request of one or more members.

Article 1098

The liabilities and obligations of the liquidators shall be regulated by the rules set out by the administrators, as long as it has not been provided for differently in the following provisions or by the contract of the company.

Article 1099

The administrators shall hand over to the liquidators the assets and the documents of the company and submit to them the accounts of the administration for the period following the last reporting.

The liquidators shall take over the assets and documents of the company, and draft, along with the administrators, the inventory, which is to reflect the active and passive situation of the assets of the company. The inventory shall be signed up by the administrators and by the liquidators.

Article 1100

The liquidators may carry out the necessary actions for the liquidation and, if the members have not provided for differently, they may sell *en bloc* also the assets of the company and enter into agreements and compromises.

They shall represent the company in the judicial proceedings.

Article 1101

The liquidators cannot undertake further actions. Otherwise they shall be personally and jointly liable for the initiated activities.

Article 1102

The liquidators cannot divide the assets of the company among the members, be it in part, as long as the creditors of the company are not paid, or the necessary amounts for paying them off have not been reserved.

Where the funds available are insufficient for the payment of the obligations of the company, the liquidators may require the members to make the deposits which they still owe to the respective limits and, as appropriate, the necessary amounts within the limit of the respective liability, proportional to the part of everyone in losses. To the same proportion shall also the obligation of the insolvent member be divided among the members.

Article 1103

The members having contributed in assed to be used shall be entitled to get it back in the situation it is in. If the items have got lost or harmed due to the grounds attributable to the administrators, the members shall be entitled to the reimbursement of the damage out of the assets of the company, unless a lawsuit maybe lodged against the administrators.

Article 1104

After the obligations of the company have been paid off, the remaining asses shall be designated to pay the shares of contributions. The eventual surplus shall be divided among the members proportional to the share of every one in profits.

The worth of the shares of contributions which are not equivalent in amounts of money shall be determined according to the assessment made in the contract, or, in lieu thereof, according to the value they had at the moment when they were given up.

Article 1105

Where in the agreement it has been foreseen that the division of the property items occurs in kind, the provisions for the division of joint property items shall apply.

Termination of the relation of one member and the company

Article 1106

Any member may withdraw from the company if it has been set up for an indefinite period of time or for the whole life of one of the members.

In addition to this, he may withdraw in the instances provided for in the contract of the company or where a fair ground exists.

In the instances provided for in the first paragraph, the withdrawal shall be communicated to the other members at least three months in advance.

Article 1107

Unless the contract of the company provides for differently, in the event of death of one of the members, the others shall liquidate the share to the benefit of his heirs, unless they prefer to dissolve the company or the heirs take it over independently and they provide the consent.

Article 1108

The expulsion of the member may also occur due to the failure to meet significant obligations emerging from the law or the contract of the company, as well as due to the ban, incapacity or his punishment with a measure including the ban, be it temporary, from official offices.

The member having contributed to the company his work or the enjoyment of a property item may also be excluded due to the eminent inappropriateness to accomplish the work or loss of the item, having occurred due to reasons, which cannot be attributed to administrators.

The member having contributed by way of assignment of ownership over a property item may also be excluded, as long as it gets lost prior to being acquired by the company.

Article 1109

The expulsion shall be determined by the majority of the members, not encompassing into this number the member to be expelled and it shall be effective 30 days of the date when notice was made to the expelled member.

Within this timeframe, the expelled member may file an objection with the court, which may suspend the implementation of the decision.

If the company consists of two members, the expulsion of one of them shall be made by the court upon the request of the other.

Article 1110

Expelled from the company shall also be:

a) the member being declared bankrupt;

b) the member to whom a creditor has managed to obtain the right to the liquidation of the share according to Article 1092 of this Code.

The expulsion provided for in the first paragraph of this Article cannot be applied where the bankruptcy of the member is a consequence of the bankruptcy of the company.

Article 1111

Where just one member leaves the company, he and his heirs shall be entitled to just an amount of money representing the worth of his share.

The liquidation of the share shall occur based on the property situation of the company on the day when leaving of the member occurs.

Upon activities being pending, the member and his heirs shall participate at the profits and loses pertaining to these activities. Notwithstanding the provisions of Article 1092, the payment of the share belonging to the partner shall occur within 6 months of his day of leaving.

Article 1112

Where just one member leaves the company, he or his heirs shall be liable to third parties regarding the obligations of the company until the day of his leaving.

His leaving shall be notified to the third parties through appropriate media, otherwise, it cannot be referred to towards the third parties who, inculpably, were unaware thereof.

CHAPTER XXIII
INSURANCE

GENERAL PROVISIONS

Article 1113

By way of the insurance contract, one party (insurer) shall, upon the

event described in the contract being established, be bound to:

a) in the event of property insurance, reimburse the other party or a third person, to whose benefit the contract has been concluded, the damage sustained within the limits of the amount that has been provide for in the contract;

b) in the event of personal insurance, reimburse to the other party or a third person, to whose benefit the contract has been concluded, the insurance amount which has been foreseen in the contract.

The insured shall be bund to pay a premium (insurance price) set out in the contract.

The insurer may be a public or private person.

Article 1114

The insurance contract shall be documented, through the insurance certificate (insurance policy) that the insurer issues for the insured, otherwise it is invalid.

Article 1115

The insurance certificate shall specifically indicate:

a) name of insurer;

b) name of insured person, in the insurance event, insured property, location where this property is, in the event of property insurance;

c) the event, upon establishment of which the insurer shall perform the obligation he has assumed in the contract;

ç) effectiveness and end of insurance contract (insurance period);

d) time when liability of the insurer starts;

e) evaluation of property in the instances when this is required for a certain type of insurance;

ë) insurance premiums and their payment periods.

Where under the law or based on the contract the reimbursement of insurance or insurance amounts shall be paid not only to the insured person but also to a third person, to whose benefit this contract has been concluded, this condition shall be indicated in the insurance certificate.

Article 1116

Upon the insurance certificate getting lost, the insurer shall, upon the request and expenses of the insured, shall issue a duplicate copy.

Article 1117

The insured shall, upon entering into the contract, inform the insurer of all the circumstances that he is aware of and which are of material interest to determining the nature and extent of risk.

It is said to be of material interest all the circumstances whereof the insurer has inquired the insured in writing about.

The insurance contract entered into while falling short of receiving answers to these questions cannot be invalid due to this fact.

Article 1118

Where, following the conclusion of the insurance contract, it emerges that the insured has intentionally provided inaccurate information in the request or documents being submitted by him based on which the insurance contract has been concluded, the insurer shall, within three months of becoming aware, be entitled to:

a) change the amount of insurance premium, insurance amount or insurance period;

b) terminate the insurance contract, as long as such circumstances exist that if the insurer knew, he would not have entered into the contract. In such a case, the insurance premium pertaining to the period needed for terminating the contract, while under all the circumstances the insurance premium to be paid for the first year of the contract, shall not be reimbursed to the insured.

Upon the insurance event being established prior to the period indicated in the above paragraph starting, the insurer shall not be bound to pay the insurance amount.

Upon the insurance contract being entered into for more than one person or property items, it shall remain valid for those persons and property items bearing no reference to the inaccurate statements or non-disclosure.

Article 1119

Declaring inaccurate information in the request or submitted documents,

based whereon the insurance contract has been entered into, or falling short of mentioning the information, while upon being established that they were not due to intention or grave negligence, does not consist a cause for terminating the contract, however, the insurer may withdraw from the contract, by way of notifying the insured in writing, within 3 months of becoming aware thereof.

Upon the insurance event being established prior to the insurer becoming aware of the inaccuracy of information or of falling short of mentioning them, or prior to the withdrawal from the contract being declared, the amount owed shall be proportionally reduced to the difference between the amount set out in the contract and those which would have been applied, as long as the true situation of facts were known.

Article 1120

Where the insurance contract is entered into on behalf of or on the account of third parties and the latter are aware of the inaccuracies in statements or falling short of mentioning the risk (insurance event), the provisions of Articles 118, 1119 of this code shall apply.

Article 1121

The insurance contract shall be invalid as long as it is established that the insurance risk has never existed or it has ceased to be prior to the conclusion of the contract.

Article 1122

The insurance risk shall be terminated if the insurance risk ceases to exist prior to the conclusion of the contract, however, the insurer has the right to the payment of the premiums, as long as the termination of existence of the insurance risk has been notified to him or until he has become aware thereof in another fashion.

Article 1123

The insured shall, while the insurance contract is in effect, be bound to notify the insurer of all the changes in the circumstances, of which he has become aware after the conclusion of the insurance contract and which can have an impact in increasing the risk.

Where the insured does not make the above notification, the insurer shall, starting from the moment of the increase of the risk, be entitled to change the extent or insurance premium, insurance amount, insurance period or to terminate the contract.

Where the insured does not admit the change or termination of the contract, he shall be entitled to lodge a lawsuit before the court.

Article 1124

The insurance contract shall enter into effect at 24:00hrs of the day of concluding the contract and it shall end at 24:00hrs of the last day of the contract duration.

Where the contract duration is above 10 years, the parties shall, upon the expiry of this period and as long as no contrary agreement exists, be entitled to withdraw from the contract, by way of making a 6-month notice.

The contract may be extended tacitly once or many times, however, at no case more than two years.

This provision shall not apply to the life insurance contract.

Article 1125

The contractor shall be obliged to pay to the insurer the insurance premium by the deadline set out in the contract. Where the premium or the first instalment is not paid by the deadline, the insurance shall be suspended up to 24:00 hrs of the day in which the contractor pays the due amount.

When the contractor doesn't pay the following insurance premiums by the set out deadline the insurance shall be suspended form the 24.00 hrs of the fifteenth day following the expiry of the payment period and the insurer shall be entitled to seek the termination of the contract.

Article 1126

Upon the insurance event being established, the insured shall be bound to notify the insurer by the deadline provided for in the contract. Where the insured fails to make such a notice, the insurer shall be entitled not to pay the insurance remuneration or the insurance amount.

Article 1127

The insured of the third person, to whose benefit the insurance contract has been entered, shall be bound to established that the insurance event has occurred and, in case of property insurance to establish also the amount of damage, as well as to notify the insurer, upon the latter's

request, the entire information he is knowledgeable of and bearing a connection to the insurance event. In the event of the insurance of the person, upon the loss of working capacity being established, the medical expertise shall also be made.

Upon the above conditions not being met, the insurer shall be entitled not to pay the insurance remuneration or the insurance amount.

Article 1128

The insurance reimbursement or insurance amount, which should be paid not to the insured by to the third person, to whose benefit the contract was entered into, cannot be attached in connection with the debts of the insured.

The insurer shall be entitled to withhold from the insurance reimbursement or from the insurance amount the amount, which the insured has to acquire from the same insurance contract (premium etc.).

Article 1129

The insurer may refer towards the person, to whose benefit the contract has been entered into, all the demurrers, which he may refer to towards the insured out of the same insurance contract.

Article 1130

Upon a person entering into an insurance contract on behalf of another, while being short of the authorisation to do this, the latter may admit the concluded contract even following the establishment of the insurance event.

The person having concluded the contract shall be bound to perform the obligation stemming from the contract himself, up to the moment when the insurer has received notice of the admission or nonadmission from the person on whose behalf has been concluded.

The insurance price shall be paid to the insurer by the above contractor for the whole period up to the moment when the insurer has taken notice of non-admission of the contract.

Article 1131

The insurer shall not be liable if death or loss of capacity of the insured to work, as well as if loos or harm to property have been caused directly

through the acts of war, unless in the insurance contract has been provided for differently.

Article 1132

The conditions about the various types of voluntary insurance of the person and property shall be set out in the contract.

Article 1133

The provisions of this Chapter shall not extend over the mandatory insurance, which is regulated by specific provisions.

The insurance of sea navigation shall be regulated in the Maritime Navigation Code.

Property insurance

Article 1134

The person entering into the property insurance contract or the third person, to whose benefit the contract is concluded, shall have a property interest on the asset being insured, otherwise the insurance contract shall be invalid.

Article 1135

Where following the conclusion of the insurance contract the property interest of the insured or of the third person, to whose benefit the contract has been entered into, lapses, this shall be considered to be terminated.

Article 1136

The insurance amount cannot be higher than the worth of property. This worth may, for some types of insurance, be set out in the insurance contract even by way of assessing the property.

By worth is to be understood the highest value that the property had at the time of establishment of the casual instance.

In the event of insuring the land products, the damage shall be determined in connection with the worth that the products would have at the time of being ripe or when they normally are harvested.

Where just one part of the property worth has been insured, the insurance amount cannot be higher than the worth of the property being insured.

Upon the above conditions being infringed, the insurance contract shall be, as appropriate, valid for an amount equal to the worth or the part of the worth of the insured property.

Article 1137

Upon the insured property getting lost or harmed, its worth shall, as appropriate, be reimbursed within the limits of the insurance amount or the shortfall of the worth of the property, unless the insurance contract provides for differently.

The insurer shall be liable for the lost profit only if this is provided for explicitly in the contract.

Article 1138

Upon the insured property getting lost or harmed in part and the incomplete insurance amount has been respectively paid, the remaining property shall be considered insured to the end of the period set out in the contract for an amount equal to the difference between the insurance amount and the remuneration having been paid.

Article 1139

Upon the insurance amount being smaller than the worth of the insured property, the remuneration of damage shall be set out proportionally to the relationship between the insurance amount and the worth of property being insured, unless the contract provides for differently.

Article 1140

The insured shall be bound to maintain the insured property carefully, abiding the provisions regulating firefighting, and agronomic and veterinary provisions. The insurer shall be entitled to check the insured property and ask the insured to make arrangements for preserving the property appropriately and for avoiding the irregularities having been found out. Upon the insured infringing the obligation referred to above, the insurer shall be entitled to terminate the insurance contract.

Article 1141

Upon the insurance event being established, the insured shall be bound to make all the arrangements depending on him to salvage and maintain the insured property to the effect of getting the damage stopped or reduced.

The insurer shall not be bound to pay reimbursement for the part of the damage which was caused due to the failure by the insured to make arrangements which could be made to salvage and maintain the insured property.

The insurer shall be bound to defray the expenses for the necessary measures which have been taken for salvaging and maintaining the insured property, regardless whether the purpose has been achieved or not, unless the insurer proves that the means applied and expenses incurred have been applied or used carelessly. The insurer shall be liable for the material damages caused on the insured property items by the means applied by the insured to avoid or reduce the harm having occurred at the insurance event, unless he establishes that these means have been applied carelessly, while not being indispensable.

Article 1142

The insurer having paid the insurance reimbursement shall be entitled to seek the repayment of the paid amount by the persons being responsible for having caused the damage.

Article 1143

The Insured shall be relieved of his obligation to defray the insurance reimbursement, as long as the insurance event has been brought about intentionally or due to grave negligence of the insured or of the person to whose benefit the insurance contract has been entered into.

In case of property insurance of persons, the insurer shall be relieved of his obligation to defray the remuneration amount even if the insurance event has been caused intentionally or due to grave negligence of the major members of the family of the insured.

Article 1144

Where the insured property is assigned to the ownership of another person, the insurance contract shall be considered to be terminated. In such a case the paid premium shall be repaid to the insured proportional to the time remaining until the expiry of the insurance contract duration.

Article 1145

Where for one and the same insurance risk separate insurance contracts

have been concluded with various insurers, the insured shall notify each insurer of all the insurances.

Where the insured does not give the above notice intentionally, the insurers shall not be bound to defray the damage reimbursement.

Upon the insurance event being established, the insured shall notify all insurers, divulging to each of them the denomination of the other insurers.

The insured shall be entitled to seek from each insurer the reimbursement of the damage they are bound to under the contract, however, the total amounts being paid shall not exceed the worth of the damage.

Article 1146

The insurer having paid the damage amount shall have the right to recourse to other insurers for sharing the respective amount under the respective contracts.

Upon one insurer being insolvent, his part shall be shared among other insurers.

Article 1147

The insurance of goods against the land, water and air transport risks shall include all the damages, which the goods may sustain in the course of the transport, unless the law provides for differently.

Article 1148

The goods insurance contract against the transport risks shall enter into effect at the moment that the goods have been handed over to the transport and shall be in effect until they are delivered to the recipient, unless the contract has provided for differently.

Article 1149

Upon the transported goods being taken over by the recipients while the latter falling short of taking down minutes, the insurer shall not be liable for damages or loss of goods, unless the law provides for differently.

Insurance of persons

Article 1150

The insurance contract for persons may be entered into in case of the events

bearing a connection with the life and working capacity of the insured.

Article 1151

The insurance amount in the insurance contract of the person shall be set out upon the agreement of the parties and under the other provisions regulating insurances.

Article 1152

The insurance contract is valid even where the life of a third person is insured. Determining the person shall occur in the insurance contract, or upon a subsequent written statement, being notified to the insurer, or upon last will.

Article 1153

The insured may provide for in the insurance contract that in case he dies, the insurance amount be paid to a member of his family, to another person, to the state or to another public legal entity.

Article 1154

The insured shall, in the course of the time that the insurance contract is in effect, be entitled to replace the person he has determining for obtaining the insurance amount by another person. To this effect, the insured shall be bound to notify the insurer in writing and to submit the insurance certificate for making the respective notes.

Article 1155

The determination of the person benefiting the insurance amount may be revoked by the contractor in the form and fashion applied for determining him.

The revocation cannot be made by the heirs following the death of the contractor, upon the insurance event being established and the person having declared that he wishes this benefit.

The withdrawal of the contractor and the statement of the beneficiary shall be notified to the insurer in writing.

Article 1156

Determining the person benefiting from the insurance shall, although it may be irrevocable, not be of effect, as long as it is the case provided for in letter 'a' of Article 771 of this Code.

Article 1157

Upon the person eventually benefiting the insurance amount not being indicated in the insurance certificate and upon the indicated person dying prior to being insured, thus falling short of being replaced by another, or upon him intentionally killing or attempting to kill the insured, the insurance amount shall be paid to the insured and, if the latter has died, to his legal or testamentary heirs.

Article 1158

Upon many persons being determined to benefit the insurance amount and some of them having died prior to being insured, or some of them intentionally killing to attempting to kill the insured, their pertinent part shall be shared among the other persons determined to obtain the insurance amount proportional to the part being apportioned to each of them.

Where the contract does not mention the part of persons determined to obtain the insurance amount, they shall be assumed to be equal.

Article 1159

Changes in profession or activity of the insured shall bring about the lapse of the insurance effect, as long as they increase the risk in such a way that, if such a situation existed at the time of entering into the contract, the insurer would not have concluded it.

If the changes are of such a nature that even if the new situation existed at the time of concluding the contract, the insurer would have entered into the contract for a higher price, the payment of the insurance amount shall be reduced proportionally to the lowest price, set out proportionally to that price which was determined at the outset.

Where the insured notifies the insurer of the above changes, the latter shall, within 15 days, declare whether he shall terminate the contract or reduce the insurance amount or raise the price.

The insured shall, within 15 days, declare whether he accepts the above changes in the contract.

Where the insured declares that he does not accept them, the contract shall be terminated.

Article 1160

The insurance amount following the death of the insured being determined to be paid to the person to whose benefit the insurance contract was entered into shall not be included in the legacy of eh insured.

Article 1161

The insurance amount emerging out of the insurance contract of the person shall be paid regardless of the amounts which might be paid out of the social insurances.

TITLE III
TRANSITORY AND LAST PROVISIONS

Article 1162

The Civil Code of the Republic of Albania shall be applied to the legal relations emerging following its entry into effect.

Article 1163

Regarding the lapse of lawsuit and adverse possession having started to run prior to the entry into effect of this Code, however, not having expired under the previous provisions, the latter shall apply.

Article 1164

The provisions of this Code regarding the possession shall apply also the possessions having started prior to its entry into effect.

Article 1165

The legal regulation of the periods of time and rent price in the contracts of residences rent shall continue to be made under the previous provisions, until the full liberalisation of this contract by way of specific provisions.

Article 1166

The specific contracts entered into prior to the entry into effect of this

Code and continuing to be applied shall be regulated by the provisions of this Code.

Article 1167

The law no 6340, dated 26/06/1981 "On the Civil Code", except the provisions regulating property regime between spouses, law no 2362, dated 16/11/1956 "On social organisations not pursuing economic purposes", law no 7688, dated 13/03/1993 "On joint ownership over residences", law no 7695, dated 07/04/1993 "On foundations", Articles 1 – 15, Decree no 600, dated 22/07/1993 "On lien and mortgage", approved, as amended, with the law no 7753, dated 30/09/1993, shall be repealed.

Article 1168

The Civil Code of the Republic of Albania shall enter into effect on 1 November 1994.

* * *

Transitional provision

(Article 4 of Law no. 17/2012, dated 16.2.2012 has provided the applicable law for lawsuits commenced prior to its entry into force)

For civil cases with the object of compensating non-pecuniary damage to reputation, which are still in process on the day of entry into force of this law, the civil legislation applicable at the time of filing lawsuits for compensation of non-pecuniary damage shall be applied.

* * *

Transitional provision

(About the application of the legal amendments to the Code according to article 11 of Law no. 121/2013, dated 18.4.2013)

The provisions on inheritance are applicable only to requests for the issuance of a certificate of inheritance, made after the entry into force of this law. Court cases with the object "request for issuance of certificate of inheritance" shall continue to be reviewed by the competent court, according to the law at the time of filing the request.

The provisions on the agency are applicable to the contracts of the agency, concluded after the entry into force of this law.

CIVIL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA

May 2025

CIVIL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA*

Pursuant to Article 16 of Law No. 7491, dated 29.04.1991, "On the fundamental constitutional provisions", upon the proposal of the Council of Ministers,

THE PEOPLES ASSEMBLY
OF THE REPUBLIC OF ALBANIA

D E C I D E D:

PART I
GENERAL PART

TITLE I
FUNDAMENTAL PRINCIPLES OF JUDICIAL PROCEEDINGS

Article 1

The Code of Civil Procedure of the Republic of Albania sets out the binding, unified and equal rules for the adjudication of civil and other disputes provided for in this Code and in specific laws.

The court cannot refuse to examine and render decisions on matters submitted for examination, on the grounds of absence of statute, the latter being incomplete, contradictory or unclear.

* Adopted by Law no. 8116, dated 29.03.1996.
Amended by Law no. 8431, dated 14.12.1998.
Amended by Law no. 8491, dated 27.05.1999.
Amended by Law no. 8335, dated 18.10.1999.
Amended by Law no. 8812 dated 17.05.2001.
Amended by Law no. 9953, dated 14.07.2008.
Amended by Law no. 10052, dated 29.12.2008.
Amended by Law no.122/2013, dated 18.04.2013.
Amended as per Constitutional Court decision no. 11, dated 05.04.2013.
Amended by Law no.160/2013, dated 17.10.2013.
Amended by Law no. 114/2016, dated 03.11.2016.
Amended by Law no. 38/2017, dated 30.03.2017.
Amended by Law no. 44/2021, dated 23.3.2021.

The United Chambers of the Supreme Court, in their civil unifying decision No. 3, dated 29.03.2012, have addressed for legal unification the following matters:

1. What role should the court play, particularly in the process of identifying the subject matter of the dispute that it is to examine and resolve, without infringing on the parties' right to dispose of the matter they have initiated?

2. Should the preparation and subsequent adjudication of the case be confined solely to what is formally stated and to what is designated in the introductory part of the claim as the "object of the claim" and the "legal basis"?

The United Chambers of the Supreme Court held that:

> 29. This situation arises from the fact that a particular set of facts may give rise to multiple legal relationships, either simultaneously or successively. These legal relationships are rooted in the underlying cause of the respective claims that the parties may bring. The object of the claim - i.e., the relief sought against the opposing party - may be identical in multiple claims; however, they differ in that they are based on distinct legal grounds. For this reason, it is the plaintiff's responsibility to specify before the court the cause upon which the claim is based, thereby clarifying the specific rights he or she seeks to protect through the legal action.
>
> In this regard, the court must determine the cause of the claim by examining the claim in its entirety, rather than limiting itself solely to the legal provisions cited by the plaintiff in the introductory section of the pleading. Even where the plaintiff has incorrectly referred to certain legal provisions, the substance of the claim may clearly indicate the right the plaintiff seeks to protect. In such cases, the court is obliged to decide the case based on the legal cause that emerges from a comprehensive examination of the claim - establishing the link between the facts alleged by the plaintiff and the rights or interests claimed to have been violated.
>
> Accordingly, Article 17 of the Code of Civil Procedure grants the court the authority to invite the parties to provide legal clarifications the court deems necessary for the resolution of the case. Through these clarifications, the parties have the opportunity to clarify and rectify any incidental discrepancies in their legal references.

Article 2

Only the parties can recourse to the court to the effect of instituting judicial proceedings, unless the law provides otherwise.

The parties are free to withdraw the lawsuit at any time, however, always before its lapse to the effect of the trial or based on the law.

Article 3

The request of the parties for instituting judicial proceedings shall be subject to meeting their obligations stemming out of these proceedings, in the forms and time limits provided for in this Code.

Article 4

The court shall attend to the due development of legal proceedings. To this effect, on basis of the competence assigned by this Code, the court shall determine the time limits and order the taking of the necessary measures.

Article 5
Scope of dispute

The scope of dispute is defined in the claims of parties.

The claims shall be submitted with the act initiating legal proceedings, as well as while assuming their rights stemming out of such proceedings. The scope of dispute may change concurring with the requests emerging during the proceedings, where such requests are sufficiently related to the initial claims.

Article 6

The court adjudicating the dispute must express an opinion on everything sought and only on what has been sought.

Article 7
Facts

A fact is considered to be any human conduct, social event or natural phenomenon, to which the law assigns a legal consequence.

Article 8

The parties shall be subject to the obligation of submitting the facts whereon they base their claims.

Article 9

The court shall invite the parties to provide explanations on the facts it considers necessary for the solution of the dispute.

Article 10

The court shall base its decision only on the facts, having been submitted during the judicial proceedings.

Article 11
Evidence
(Amended by Law no. 38/2017, Article 1)

Evidence are data being taken from the sources and under the rules provided for in this Code and in other laws, which corroborate or reject the claims or defenses of the participants to the proceeding.

Article 12

The party asserting a right shall be subject to the obligation of establishing the facts whereon he/she bases its claim in compliance with the law.

Article 13

The commonly or officially known facts shall not be necessary to be established.

Facts, whereon a legal presumption exists, need not be established by the party benefiting from the presumption.

Article 14
(Amended by Law no. 10052, dated 29.12.2008, Article 1)

The Court shall be subject to conducting a due legal process, by way of guaranteeing the conduct of a complete and comprehensive investigation in compliance with the law.

Article 15

The parties shall be obligated to render their assistance for the normal conduct of the judicial investigation. The court shall hold them liable in case of their guilty omission or obstruction.

Article 16
Applicable law

The court shall settle the dispute in conformity with legal provisions and other effective norms, being binding to be applied. It shall make an accurate denomination of the facts and actions related to the dispute, not bound to the denomination, which may be proposed by the parties.

Nevertheless, the court cannot change the legal basis of the lawsuit, if not requested to do so by the parties.

The United Chambers of the Supreme Court, in their unifying decision No. 9, dated 09.03.2006, have addressed for legal unification the following matters:

Article 16 of the Code of Civil Procedure provides that:

> "The court shall resolve the dispute in accordance with the legal provisions and other applicable rules that are binding upon it. It shall make an accurate legal characterization of the facts and actions related to the dispute, irrespective of the legal qualification proposed by the parties. However, the court may not alter the legal basis of the claim without a request from the party".
>
> It is precisely the content of the second paragraph of the above provision that is overlooked and not addressed by the court of appeal. Referring to the phrase "The court shall make an accurate legal characterization of the facts and actions related to the dispute, irrespective of the legal qualification proposed by the parties", found in the first paragraph, and the phrase "The court may not alter the legal basis of the claim without a request from the party", in the second paragraph, at first glance it may appear that these two paragraphs present contradictory provisions. However, this is not the case.
>
> From the presentation of the facts and circumstances of the case by each party (in the statement of claim, in substantive responses, or in the counterclaim), the court forms its own understanding regarding the nature of the legal relationship from which the dispute between the parties has arisen. In other words, regardless of the qualification proposed by the parties concerning the legal characterization of the facts (events or actions), the court clarifies for itself the appropriate legal characterization.

However, the legal basis of the claim is determined exclusively by the plaintiff in the content of the statement of claim, by making the relevant reference to the specific provisions of the substantive law. Both of these elements assist the court in clarifying the nature of the legal relationship from which the conflict between the parties arises.

In conclusion, within the meaning of Article 16 of the Code of Civil Procedure, the accurate legal characterization of the facts and actions (more precisely, the events and actions constituting legal facts) related to the dispute is carried out by the court adjudicating the case, whereas the determination of the legal basis of the claim is made by the plaintiff, at the time of filing the claim, and remains fully within the plaintiff's discretion to amend until the conclusion of the judicial investigation, by submitting a request to the court in a procedurally appropriate form.

In Article 185 of the Code of Civil Procedure, attention is drawn to the use of the term "legal ground of the claim", alongside the term "object of the claim". The doctrine of civil procedural law has clearly defined these two essential elements of a claim. The cause (legal ground) is the reason for the judicial request, which is composed of the right and the factual situation that opposes this right (*causa petendi*), i.e., the circumstance that infringes, impairs, or denies the plaintiff's subjective right.

On the other hand, the object is that which is requested as the outcome of the claim, namely, the application of the law and the acquisition of what is sought as a consequence of the law's application (*petitum*).

The subjective right claimed by the plaintiff and defined in the statement of claim, as a constituent part of the legal ground of the claim, within the meaning of Article 185 of the Code of Civil Procedure, is identical to the legal basis of the claim (the legal qualification made by the plaintiff) within the meaning of Article 16(1) of the Code of Civil Procedure.

The "statement of facts and circumstances on which the claim is based", as provided in Article 154 of the Code of Civil Procedure, serves the court for the purpose of "making an accurate legal characterization of the facts and actions related to the dispute" within the meaning of Article 16(1) of the Code, and for determining the factual situation that contradicts the plaintiff's

subjective right, which is part of the legal ground of the claim, as defined in Article 185 of the Code.

The "statement of the right on which the claim is based", within the meaning of Article 154 of the Code, corresponds to the plaintiff's subjective right as a constituent part of the "legal ground of the claim" within the meaning of Article 185, and also to the "legal basis of the claim" as defined in Article 16(2) of the Code of Civil Procedure.

The "specification of the plaintiff's demand" in the statement of claim, within the meaning of Article 154 of the Code, corresponds to what is sought to be obtained as a consequence of the application of the law, in line with the definition of the object of the claim, as provided in Article 185 of the Code of Civil Procedure.

Article 17

The court invites the parties to give explanations from the legal viewpoint, which it considers necessary for the settlement of the dispute.

Article 18
Adversarial procedure

No party can be tried without being heard or without being summoned to trial.

Article 19

The parties must make known to each other, in due time, the means and the facts on which they base their claims, the evidence they shall present and the legal provisions they shall refer to, in order to make it possible for each party's interests to be defended in trial.

Article 20

The court must itself abide by the adversarial principle and must request this principle be applied.

It supports its decision only on the means, explanations, documents and other evidence shown or brought by the parties, when the latter have been in a position to debate in conformity with the adversarial principle.

Article 21

When the law allows and the circumstances of the case dictate the taking of a court decision, independently from the knowledge of one party, the latter has the right to appeal in a court way against the decision made.

Article 22
Defense

The parties may defend themselves, except for the cases when representation is mandatory.

Article 23

The parties are free to set up the defense of their interests in trial through representation or through any other legal assistance, in conformity with provisions in force.

Article 24

The court always hears the parties directly, unless the law provides otherwise.

Article 25
Conciliation and Mediation of parties
(Amended by Law no. 38/2017, article 2)

It is a task of the court to make efforts to reconcile the parties in dispute and/or notify and steer the parties on the possibility of resolving the dispute through mediation.

Article 26
The public character of judicial proceedings
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 1)

The judicial proceedings are open, unless otherwise provided in this Code.

The court shall not allow the participation of mass media when it is deemed that such participation is not beneficial to the case. In any case, the final decision of the court shall be made public.

Article 27
Use of Albanian language in trial

The Albanian language is used in all trial stages.

Persons, who do not know Albanian language, use their own language. They receive knowledge on the evidence and for the whole development of the trial through the interpreter.

Article 28
The court in civil judicial proceedings
(Amended by Law no. 8812, dated 17.5.2001, article 2)

The court must rule on all claims that are put forward in the lawsuit without transcending its boundaries, and shall perform a just, independent and impartial judgement within a reasonable timeframe

Article 29

The court bases its decision on the evidences presented by the parties or by the attorney, taken in court session.

The court evaluates the evidences which are in the acts and on basis of its inner conviction, formed by the consideration of the circumstances of the case in their entirety.

Article 30
Publication of final decision
(Amended by Law no. 8812, dated 17.5.2001, article 3)

When it is deemed that the publication of the final decision serves the purposes of rehabilitation and/or indemnity, the court, upon request of the interested party, shall order publication of the decision by the mass media.

Should the court fail to issue notification within the specified timeframe, the favored party has the right to request publication at the expense of the person obliged.

TITLE II
LAWSUIT

Article 31
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 4)

To file a lawsuit is the right of any person that raises a claim, to be heard on the foundation of such claim, in order for the court to declare it based or not.

The opposing party has the right to discuss on and present evidence against the foundation and the legal grounds of the claim.

The United Chambers of the Supreme Court, in their unifying decision No. 22, dated 13.03.2002, have addressed for legal unification the following matters:

1. Should a construction built without the authorization of the competent state authority be included in the division of joint property?
2. Does such a construction give rise to the acquisition of ownership through a judicial decision?
3. Is the administrative authority permitted to intervene with regard to the unlawful construction following the issuance of the court's decision?

The United Chambers of the Supreme Court held that:

> Pursuant to Article 370 of the Code of Civil Procedure: "The adjudication concerning the division of property in co-ownership or inheritance, in its initial phase, aims to examine and determine the co-ownership rights of the litigating parties, their respective shares, as well as the assets to be divided. Once the necessary evidence is gathered, the court, by way of an interim decision, authorizes the division and determines the circle of co-owners, the items to be divided, and the share due to each of them".
>
> The legal concept of co-ownership is provided under Article 199(1) of the Civil Code, which states: "Co-ownership exists when one or more things or other real rights belong jointly to two or more persons." Therefore, the plaintiff must prove before the court that they and the other participants in the proceedings hold ownership rights over the property they seek to divide.
>
> The legal notion of ownership is always linked to its statutory definition, as derived from the content of Article 149 of the Civil Code: "Ownership is the right to freely enjoy and dispose of property, within the limits prescribed by law". This right (ownership) is acquired through methods provided by the Civil Code and other means established by special law.
>
> In the case at hand, the plaintiff did not present any evidence to substantiate the claim of ownership or the transfer of the property

into co-ownership. Furthermore, as noted, the construction (an addition) in question is not registered in the immovable property register.

Under these circumstances, since the plaintiff failed to prove co-ownership rights over the object of the litigation, they lack standing to seek its division. In accordance with Article 6 of the Code of Civil Procedure, "The court must decide on everything requested and only on what has been requested."

An addition or construction carried out in violation of applicable legal norms and unregistered in the immovable property register cannot be subject to judicial partition. Moreover, the interested party, not representing a lawful interest in such a case, cannot be legitimized to bring a claim for the division of the property.

Thus, a judicial decision cannot serve as a basis for legalizing ownership over an unlawfully constructed, unregistered structure, nor can such construction be subject to partition. Additionally, the existence of such a court decision does not prevent administrative authorities from acting within their competence concerning the illegality of the construction.

Article 32

(Amended by Law no. 8812, dated 17.5.2001, article 5)

The lawsuit can be filed:

a) to claim the restoration of a right or legitimate interest that has been infringed;

b) to prove the existence of a legal relationship or of a right or lack thereof;

c) to recognise the truthfulness or untruthfulness of a document bearing legal consequences for the plaintiff.

Article 33

No lawsuit can be initiated by a person who lacks juridical capacity to act.

Article 34
Abuse with rights in the proceeding

(Amended by Law no. 38/2017, article 3)

1. The court, at any instance of proceedings, when determining that

the parties or their representatives knowingly file abusive lawsuits, complaints, requests or claims, which are repeated and with malice, or when intentionally seek to procrastinate proceedings, or when it is determined that the parties or their representatives have hidden or distorted in bad faith, or severe guilt, facts and important circumstances related to the case, shall order by decision made at the conclusion of the proceedings, unless provided otherwise in this Code, the issuance of a fine to those responsible in the amount from 50,000 (fifty thousand) to 100,000 (one hundred thousand) ALL. An appeal against this decision shall be allowed under the rules for final or nonfinal decisions, depending on the type of decision that concludes the relevant proceedings.

2. If it turns out that the party that has lost the trial has acted or has been defended in the trial in bad faith or severe guilt, the court, at the request of the other party, shall charge it to pay both the court costs and the compensation of the damage concerned. The request for the compensation of the damages shall be filed in writing by the interested party during the proceedings at first instance, until the judicial investigation has not been declared closed and it shall be subject to appeal and execution under the general rules.

TITLE III
THE COURT, JURISDICTION AND COMPETENCE

CHAPTER I
COMPOSITION OF THE COURT

Article 35

(Amended by Law no. 8812, dated 17.5.2001, Article 6; by Law no. 10 052, dated 29.12.2008, Article 2;
Letter "b" repealed by Law no. 49/2012; amended by Law no. 122/2013; paragraph II letter "a", paragraph IV and paragraph V amended by Law no. 38/2017, Article 4; paragraph IV second sentence and paragraph V second sentence amended by Law no. 44/2021, Article 1)

The First Instance Court tries by means of an adjudicating body composed of one or three judges.

The adjudicating body composed of three judges shall try the following cases:

a) lawsuits exceeding the value of 50 million ALL;

b) *(repealed)*;

c) lawsuits for the declaration of a person as missing or deceased;

ç) lawsuits for the deprivation or limitation of a person's legal capacity to act.

Other cases shall be tried by one judge.

The Court of Appeals examines with a single judge the appeals against the decisions for lawsuits worth up to twenty times the minimum wage at the nationwide level, deriving from the contractual relationship, the special appeal against the decision rejecting the request for issuing the execution order, special appeals against the decision of the court having examined the contestation of the actions of the judicia; bailiff, as well as in other cases provided for in this Code.

The High Court adjudicates in a Chamber with a panel consisting of 3 judges. The High Court adjudicates on the unification and development of the judicial practice with adjudicating panels of five judges. The High Court adjudicates in Joint Chambers, with the participation of all judges, the cases envisioned explicitly in other provisions of this Code.

CHAPTER II
JURISDICTION

Article 36
(Added paragraph V by Law no. 38/2017, Article 5)

All civil disputes and other disputes provided in this Code and in specific laws fall under the jurisdiction of the courts.

Civil court jurisdiction is exercised in conformity with the provisions of this Code and other laws.

No other institution has the right to accept for consideration a civil dispute which is being tried by the court.

Any agreement entered into contrary to this provision is invalid.

The jurisdiction shall be determined at the time of filing the lawsuit in court, despite the subsequent changes to the fact or law.

The United Chambers of the Supreme Court, in their unifying decision No. 8, dated 10.06.2011, have addressed for legal unification the following matters:

1. When employment contracts are concluded between entities that enjoy immunity from the jurisdiction of Albanian courts (pursuant to the Convention on the Privileges and Immunities of the Specialized Agencies and its Annexes, ratified by Law No. 9105, dated 17.07.2003, as well as the Bilateral Agreements entered into between the Government of the Republic of Albania and the governments of other states), and Albanian nationals, do Albanian courts have jurisdiction to adjudicate disputes arising from such employment relationships?

The United Chambers of the Supreme Court held that:

16. When employment contracts are concluded between entities that enjoy immunity from the jurisdiction of Albanian courts, pursuant to the Bilateral Agreement entered into between the Government of the Republic of Albania and the Government of the United States of America, dated 10.06.1992, and Albanian nationals, then - irrespective of the law applicable to the resolution of the dispute - Albanian courts do not have jurisdiction to adjudicate disputes arising from such employment relationships.

17. Considering the particular circumstances of the case, especially the provisions of the employment contract between the litigating parties, and with reference to Article 32(2) of the Vienna Convention on Diplomatic Relations and Article 39(a) of the Code of Civil Procedure, the United Chambers conclude that the decision of the Tirana Judicial District Court - which dismissed the defendant's claim by upholding the jurisdiction of Albanian courts to adjudicate the matter - is correct and should therefore be upheld.

18. As regards the second issue submitted for resolution by the Civil Chamber of this Court, the United Chambers of the Supreme Court consider that, in the case under review, legal elements exist that constitute an exception to the general rule of immunity, and these are supported by paragraph "a" of Article 39 of the Code of Civil Procedure and Article 32(2) of the Vienna Convention on Diplomatic Relations (1961).

Article 37

(Amended by Law no. 8812, dated 17.5.2001, article 7)

The jurisdiction of the Albanian courts for foreign natural and legal persons is regulated by law.

The jurisdiction of Albanian courts cannot be transferred to a foreign jurisdiction by agreement, unless the trial is related to an obligation between foreign persons or between a foreign person and an Albanian citizen or a legal person with no domicile or residence in Albania and when these exemptions are included in international agreements, ratified by the Republic of Albania.

Article 38

(Amended by Law no. 38/2017, article 6)

1. When the same claim, between the same parties, with the same cause and subject of the lawsuit is being considered simultaneously by a court of a foreign country and the Albanian court, the latter may suspend the proceedings on this dispute when:

a) The lawsuit has been filed before in time in the court of a foreign country;

b) The decision of a court of a foreign country can be recognized and/or enforced in the Republic of Albania;

c) The Albanian court is satisfied that the suspension is necessary for the proper administration of justice.

2. The Albanian court can continue the process at any time if:

a) The possibility of having two incompatible decisions disappears;

b) The proceedings in the court of a foreign country has been suspended or terminated;

c) The Albanian court is satisfied that the process in the court of a foreign country will not be completed in reasonable time; or

ç) The continuation of proceedings shall be requested for a better administration of justice.

3. The Albanian court shall close the case, when the court of a foreign country resolves the dispute by a final decision, which can be recognized and/or enforced in the Republic of Albania.

Article 39
Jurisdiction on consular and diplomatic missions
(Amended letter "b" by Law no. 8812, dated 17.5.2001, article 8)

Members of consular and diplomatic missions residing in the Republic of Albania are not subject to the jurisdiction of Albanian courts unless:

a) they voluntarily agree;

b) the conditions and terms provided by the Vienna Convention on Diplomatic Relations are in place.

Article 40

Civil jurisdiction of the Albanian courts does not extend to the representatives of other states and to their accompanying group, when they are staying in the Republic of Albania upon an official invitation.

CHAPTER III
COMPETENCE

A. MATERIAL COMPETENCE

Article 41
(Amended by Law no. 8812, dated 17.5.2001, Article 126; added the last paragraph by Law no. 38/2017, article 7)

In the competence of the courts of first instance shall be all civil and other disputes provided for in this Code and in other laws.

The competence shall be determined at the moment of filing of the lawsuit in court, despite the subsequent changes of the fact or of the law.

B. TERRITORIAL COMPETENCE

Article 42

Lawsuits are brought in the court of the place where the defendant has its domicile or its residence, and in those cases when it is not known, at the court of the place where he has a temporary residence.

When the defendant has neither a domicile, residence nor temporary residence in the Republic of Albania, the lawsuit is brought at the court where the plaintiff has its residence.

Article 43

(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 126)

When the defendant is a legal person, lawsuits shall be filed at the place of the legal person's headquarters.

Lawsuits that ensue from a legal relationship with a branch or a local agency of the legal person may also be filed in the court where this branch or agency has its seat, as well as in the First Instance Court where the legal person has a building in which it conducts its activity, or an authorised representative that can appear in court for the purpose of the lawsuit.

Article 44

Lawsuits against minors, who have not reached the age of fourteen years or against persons who have been totally deprived of the capacity to act, are brought in the court where their legal representative has its residence.

Article 45

Lawsuits on real rights to immovable objects, and on the division of common objects and possession are brought in the court of the place where these objects are or where their greater part is located.

Lawsuits resulting from denouncement of a new work and of a possible damage are brought in the court of the place where the action on which the lawsuit has been brought took place.

Article 46

Lawsuits resulting from inheritance, lawsuits on invalidity of testament and those on division of inheritance are brought in the court of the place where the person leaving the inheritance has had his latest residence and, when the residence is not known, in the court of the place where all the properties or its greatest part are.

When the person leaving the inheritance is an Albanian citizen and at the time of his demise did not have a residence in the Republic of Albania, lawsuits as provided in the first paragraph may be brought in the court of the place where the person leaving the inheritance has had his last

residence in Albania or in the court of the place where the greater part of his properties are situated. In case the person leaving the inheritance did not have any last residence, or property in the Republic of Albania, the above-mentioned lawsuits are brought in the court of the capital city.

The Civil Chamber of the Supreme Court, in its unifying decision No. 00-2024-3759(90), dated 29.02.2024, has addressed for legal unification the following matters:

1. In proceedings concerning matters of a gratuitous character (i.*e., without adversarial parties*), may the court, as a preliminary matter, examine and decide on the lack of territorial jurisdiction?

Regarding the above, the Civil Chamber of the Supreme Court has determined the following:

> 11. In the prevailing practice of the Civil Chamber of the Supreme Court, where Article 61 of the Code of Civil Procedure (CCP) has been interpreted following the amendments introduced by Law No. 38/2017, it has been consistently held that the court's authority to assess territorial jurisdiction as a preliminary matter is restricted solely to claims brought under Articles 45 and 46 of the CCP. This authority may not be extended to other types of claims governed by different procedural provisions. Since 2019, the Supreme Court has issued a series of decisions confirming that an interpretation aligned with the general principles governing civil proceedings - and with the legislative intent behind the amendment of Article 61 of the CCP - requires a strict (*stricto sensu*) application of the exception established by this provision.
>
> In this regard, the court's competence to examine territorial jurisdiction as a preliminary issue constitutes an exception to the general rule and to the principle of party disposition, and as such, cannot be broadly interpreted or applied to cases other than those explicitly provided for under Articles 45 and 46 of the CCP (see Decision No. 00-2019-155, dated 28.03.2019; Decision No. 00-2019-265, dated 09.05.2019; Decision No. 00-2019-188, dated 28.03.2019; Decision No. 00-2019-120, dated 04.03.2019; Decision No. 00-2021-1005, dated 30.06.2021; Decision No. 00-2022-1362, dated 20.07.2022 of the Civil Chamber of the Supreme Court, etc.).
>
> 15. The Chamber emphasized that the ongoing ambiguity in judicial practice - even years after the entry into force of the amendments to Article 61 of the CCP by Law No. 38/2017 - is

incompatible with the principles of the rule of law and legal certainty. The European Court of Human Rights (hereinafter "ECtHR"), in a number of decisions, has emphasized that consistency and equal application of the law by the courts are integral elements of the right to a fair trial (Article 6 of the European Convention on Human Rights). According to the ECtHR, a pattern of contradictory decisions by domestic courts may give rise to legal uncertainty, thereby eroding public confidence in the judiciary - an essential component of a democratic state governed by the rule of law (see *Vinčić and Others v. Serbia*, Application No. 44698/06, ECtHR judgment dated 01.12.2009).

38. In the same vein, the amendment of Article 62 of the CCP and the repeal of Article 63 further support the legislator's intention to treat territorial jurisdiction in civil proceedings as a narrowly defined procedural exception. Prior to the amendments introduced by Law No. 38/2017, Article 62 of the CCP provided the right to lodge a special appeal with the Supreme Court against a court decision declaring a lack of jurisdiction to adjudicate the dispute. The earlier version of this provision explicitly stated: "*A special appeal may be filed with the Supreme Court against the decision of the court that declares incompetence to adjudicate the dispute, as well as against its decision based on Article 60 of this Code, by the parties and by the prosecutor, when a claim has been filed or when he has participated in the adjudication of the dispute*".

Article 47

Lawsuits on the demand for sustenance and lawsuits resulting from labor relations may be brought either in the court where the defendant has his residence or in the court where the plaintiff has his residence.

The lawsuit on the termination or reduction of the decided sustenance is brought in the court of the place where the plaintiff has his residence.

Article 48

Lawsuits resulting from damage may be brought either in the court of the place where the plaintiff has his residence or in the court of the place where the damage has been caused. When compensation for damage caused by death or impairment of health is requested, the lawsuit may also be brought in the court of the place where the plaintiff has his residence.

Article 49

Lawsuits, requesting enforced execution on things, are brought in the court of the place where these things are or the greatest part of their value is.

Lawsuits requesting enforced execution on performance of or omission to perform a certain action are brought in the court of the place where such enforcement must be fulfilled.

The United Chambers of the Supreme Court, in their unifying decision No. 1, dated 17.01.2011, have addressed for legal unification the following matters:

1. Is a decision of the Civil Service Commission (KSHC) an enforceable title (even when such decision becomes final due to the absence of an appeal)?
2. If not, is the decision of the Court of Appeal - rendered upon adjudicating the Institution's appeal - an enforceable title?
3. If so, which court is functionally competent to issue the execution order?
4. If it is ultimately determined that the court of the judicial district is competent to issue the execution order, which court is territorially competent: the court where the KSHC is located, the court where the institution is headquartered, or the court where the civil servant resides?
5. In light of previous decisions rendered by the United Chambers - which have characterized the KSHC as a "*quasi-judicial*" body and the Court of Appeal as the appellate body reviewing KSHC decisions - then, from a territorial standpoint, which Court of Appeal is competent to adjudicate the matter: the Tirana Court of Appeal (based on the location of the KSHC) or the Court of Appeal in the jurisdiction where the appealing institution is headquartered?

The United Chambers of the Supreme Court hold that:

> Upon analyzing the relevant legislation (including the Law on the Civil Servant, the Code of Civil Procedure, and the applicable unifying decisions), it is evident that both central and local administrative institutions are legally obliged to immediately execute the decisions of the KSHC - whether such decisions become final due to the lack of an appeal or as a result of being upheld

by higher courts. In cases where KSHC decisions are not executed voluntarily by the administrative bodies, and given that such decisions are equivalent to judgments rendered by a court of first instance, the civil servant has the right to request their compulsory enforcement pursuant to the provisions set forth in the Code of Civil Procedure (Part Four – Compulsory Execution, Article 510 and following articles).

From a procedural standpoint, the following are considered enforceable titles: all final civil judgments that impose an obligation, court rulings on interim measures for securing claims, and decisions on provisional enforcement which are binding and enforceable. The United Chambers of the Supreme Court conclude that the decisions of the KSHC - which, both in nature and binding force, are equivalent to first-instance judicial decisions and become final either through the lapse of the appeal deadline or confirmation by a higher court - constitute enforceable titles.

According to Article 511 of the Code of Civil Procedure, enforcement of an executive title is initiated upon the creditor's request. For this purpose, the execution order is issued within five (5) days from the date of submission of the creditor's request, pursuant to subparagraphs (a) and (b) of the aforementioned article, by the court that rendered the decision. The enforceable title serves as a direct and immediate basis for the creditor's application for enforcement and for the obligation of the enforcement office to carry out the execution accordingly.

The United Chambers of the Supreme Court further conclude that any party in whose favor a decision has been rendered by the KSHC - which has either not been appealed or has been upheld and thereby become final - and which has not been voluntarily executed by the relevant administrative institution, has the right to request compulsory enforcement. This is done by submitting a request to the court that rendered the decision, seeking the issuance of an execution order in accordance with Article 511 of the Code of Civil Procedure.

Article 50

Lawsuits having as subject the objection of actions performed by the bailiff for enforced execution are brought in the court of the place of execution.

Article 51

Lawsuits on proving the existence or non-existence of marriage, on annulment of marriage and on its dissolution, may be brought either in the court of the place where the spouses had their latest common residence or in the court of the place where the defendant has his residence. When the defendant does not have a domicile, residence or temporary dwelling in the Republic of Albania, the lawsuit is brought in the court of the place where the plaintiff has his domicile, residence or temporary dwelling, and when even the plaintiff does not have one of them, the lawsuit is brought in the court of the capital city.

Article 52

Territorial competence may be changed by written agreement of the parties, except for the cases provided in Articles 45 and 46 of this Code, and when the law prohibits such an agreement.

Article 53

When there are several defendants, who have their domicile or residence in different places, the lawsuit may be brought in the court of the place where each of the defendants has his domicile or residence.

Article 54

The right to choose between several competent courts rests with the plaintiff and is exercised through the bringing of the lawsuit.

C. CHANGE OF COMPETENCE DUE TO CONNECTION BETWEEN DISPUTES

Article 55

The court which tries the main lawsuit has the jurisdiction to consider also the secondary requests, the countersuit or the main intervention. In this case, the court takes decides for their joinder into a single case.

The United Chambers of the Supreme Court, in their unifying decision No. 3, dated 28.04.2014, have addressed for legal unification the following matters:

1. If, in a civil proceeding, a counterclaim of an administrative nature is raised - or conversely, in an administrative proceeding, a civil counterclaim is raised - how should the court proceed in regard to subject-matter jurisdiction for the adjudication of such claims?

2. How is subject-matter jurisdiction to be determined in first-instance, appellate, and Supreme Court proceedings in cases where the counterclaim was raised and accepted for examination prior to 04.11.2013, compared to cases in which the counterclaim was initially raised before 04.11.2013, but the court accepted (or is now accepting) it for examination after that date?

The United Chambers of the Supreme Court held that:

> 32. If, in a civil proceeding, a counterclaim of an administrative nature is raised, the court adjudicating the principal claim lacks subject-matter jurisdiction to examine the defendant's counterclaim. Similarly, if, in an administrative proceeding, a counterclaim of a civil nature is raised, the court reviewing the main claim does not have the competence to accept the counterclaim due to lack of subject-matter jurisdiction.
>
> Where the subject matter of the dispute encompasses multiple claims of both civil and administrative nature - regardless of whether the claims are merely related or are substantively interdependent - and in reference to Articles 61 and 159 of the Code of Civil Procedure, as well as Articles 13 and 23 of Law No. 49/2012, the court must sever those claims falling outside its subject-matter jurisdiction and transfer them to the court with proper competence.
>
> i. In cases where, during the course of proceedings, a counterclaim of a different legal nature from the main claim (respectively, administrative or civil) is raised, and such counterclaim was submitted prior to 04.11.2013, it shall continue to be reviewed by the court competent to adjudicate the principal claim - whether at the first-instance, appellate, or Supreme Court level.
>
> ii. Cases in which the subject matter includes multiple claims of both civil and administrative nature, and all such claims were submitted before 04.11.2013, shall continue to be adjudicated by the court before which they were initially raised.

The United Chambers of the Supreme Court, in their unifying decision No. 4, dated 12.10.2013, have addressed for legal unification the following matters:

1. When the subject matter of a case involves multiple claims of both a civil and an administrative nature, and the court determines that they constitute a simple aggregation, then, in accordance with Articles 61 and 159 of the Code of Civil Procedure and Articles 13 and 23 of Law No. 49/2012, the court must separate the claims falling outside its subject-matter jurisdiction and transfer them to the competent court.

2. When the subject matter of a case involves multiple claims of both a civil and an administrative nature, and the court determines that they constitute an interdependent aggregation, then, pursuant to Article 55 of the Code of Civil Procedure, Article 24 of Law No. 49/2012, and the application of the principle *lex specialis derogat legi generali*, the competent court shall be determined as follows:

   - Where, among the claims, the plaintiff contests an administrative act, and the legal consequences of that act give rise to civil liability, in all such cases the administrative court shall have jurisdiction.

   - Where one of the claims is of a civil nature but is closely connected to an administrative act, and the consequences of that act originate from the exercise of state authority, the administrative court remains the competent forum.

   - Where the remaining claims, although not in themselves administrative in nature, are interdependent with the effects of the administrative act, jurisdiction shall likewise rest with the administrative court.

3. When, based on the subject matter and legal grounds of the claim, the dispute is classified as civil in nature, and the resolution of that civil matter entails the execution of certain administrative actions - such as an order directed to the Immovable Property Registration Office (ZVRPP) to register or delete a property entry - then the examination of the case falls within the jurisdiction of the court competent to adjudicate civil disputes.

Where the decision of the Commission for the Return and Compensation of Properties or the Agency for the Return and Compensation of Properties is challenged within the subject matter of the dispute, that matter is to be regarded as a civil dispute, and will be examined by the court with jurisdiction over civil cases.

Article 56

(Amended letter "b" by Law no. 8812, dated 17.5.2001, article 9)

The court that has the authority to examine the dispute, upon the request of the parties, may decide to transfer the case to another court retaining the same authority only when:

a) transfer to the other court facilitates a quicker settlement than the court selected by the plaintiff;

b) the request of the defendant to try the dispute at the court of his current residence or domicile is deemed relevant, if his place of residence or domicile was not known.

Article 57

(Amended by Law no. 38/2017, article 8)

1. When two or more lawsuits are being adjudicated in different proceedings and are linked between them by subject or cause, they can be joined into a single trial.

2. The decision for joinder of cases shall be made by the court in which the case has been filed before in time.

3. The joinder of cases can be joint upon request of the parties or ex officio, until the order for scheduling the judicial hearing by the court that makes the decision, has not been issued.

4. When joining lawsuits, which are adjudicated according to the rules of a summary trial with lawsuits adjudicated according to ordinary rules, for the adjudication of the case shall be applied the ordinary rules.

5. This provision shall not apply where the material competence in the cases under consideration is not the same.

Article 58

When at the same court, or at different courts, disputes between the same parties are reviewed at the same time, and have the same cause and

subject, the court decides to cease the trial of the disputes presented after the one first registered one.

D. OBJECTION TO THE JURISDICTION AND COMPETENCE

Article 59

(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 126; paragraph II amended by Law no. 44/2021, article 2)

The court, at any stage and level of the trial, even ex officio, shall consider whether the case under examination shall be subject to judicial or administrative jurisdiction.

When the court decides to take the case out its judicial jurisdiction, a special recourse is allowed to the High Court, meanwhile, when deciding that the case falls under the judicial jurisdiction, an appeal is allowed against the decision together with the final or non-final decision.

Article 60

(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 126)

In the case a state institution claims that the dispute accepted for examination by the court is subject to administrative jurisdiction, the claim is settled by the High Court upon request of the state institution or of the prosecutor.

The initiated trial shall be suspended until the decision settling the dispute regarding the jurisdiction is released. Meanwhile the court may be allowed only to take measured for securing the lawsuit as well as perform procedural actions which cannot be postponed.

Article 61
Transferring the case to the competent court

(Amended by Law no. 38/2017, article 9)

1. The court, when finding that it is not competent because of the subject-matter, the function or the exclusive territorial competence, as per Articles 45 and 46 of this Code, ex officio or upon request of the parties, shall determine its noncompetence and shall transfer the acts to the competent court.

2. In the other cases, the lack of territorial competence could be considered only at the request of the parties, until the order for scheduling the judicial hearing has not been issued.

The Civil Chamber of the Supreme Court, in its unifying decision No. 00-2018-611, dated 07.02.2018, has addressed for unification the following matters:

1. The adjudication of judicial cases registered prior to the entry into force of Law No. 133/2015.
2. The adjudication of legal actions brought after the entry into force of Law No. 133/2015, challenging prior decisions issued by the competent administrative bodies for property return and compensation - namely, the former Property Return and Compensation Commissions (hereinafter, the former K.K.K.P.), the former Regional Offices of the Agency for the Return and Compensation of Properties (hereinafter, the former Z.R.V.K.K.P.), or the former Agency for the Return and Compensation of Properties (hereinafter, the former A.K.K.P.).
3. The adjudication of disputes between former owners and third parties, in which the decision of the competent authority for property return and compensation is no longer challenged as an administrative act, but rather as a title of ownership.

Regarding the above, the Civil Chamber of the Supreme Court has determined the following:

> For legal actions registered with the court after 23.02.2016 - the date on which Law No. 133/2015 entered into force - filed by the subject/former owner or their heirs against a decision rendered by the former K.K.K.P., former Z.R.V.K.K.P., or former A.K.K.P., concerning claims submitted under the prior legal framework governing property return and compensation, the Court of Appeal shall have subject-matter and functional jurisdiction.
>
> Legal actions, counterclaims, or principal intervener claims filed against decisions of the former A.K.K.P., K.K.K.P., or Z.R.A.K.K.P., rendered in favor of a subject and concerning a matter that was not subject to further appeal - and where such decisions are now contested not as administrative acts but as ownership titles - shall fall within the jurisdiction of the courts of first instance in the territory where the property in dispute (the non-appealable matter) is located.
>
> Furthermore, legal actions initiated and registered in court by subjects/former owners or their heirs prior to 23.02.2016 - i.e., before the entry into force of Law No. 133/2015 - challenging decisions of the former A.K.K.P., K.K.K.P., or Z.R.A.K.K.P., shall

continue to be adjudicated and concluded by the courts of first instance in the territory where the non-appealable matter is located. The competence and jurisdiction of these courts, pursuant to the principles of *perpetuatio iurisdictionis* and *perpetuatio fori*, are determined on the basis of the legal framework in force at the time the legal action was filed.

In this decision, the provisions of the Code of Civil Procedure are applied to determine the subject-matter and functional competence of the courts in property-related disputes arising as a consequence of the entry into force of Law No. 133/2015.

Article 62

(Amended by Law no. 44/2021, article 3)

Against the decision of the court on the competence for the adjudication of the dispute, an appeal is allowed together with the final or non-final decision.

Article 63

The appeal suspends the trial

(Amended paragraph II by Law no. 122/2013, article 2; repealed by Law no. 44/2021, article 4)

Article 64

Obligation to accept a case for trial

(Words added at the end of paragraph II, by Law no. 122/2013; amended by Law no. 38/2017, Article 10; Paragraph II amended and paragraphs III and IV added by Law no. 44/2021, Article 5)

The case, which is sent for consideration from a court to another one of the same level or by a higher court, should be accepted and reviewed by the court to which the case is sent.

The conflicts on competence between the courts shall not be permitted, but the court is entitled to present its stance to the High Court, which decides on the determination of the competence in the counselling chamber, with an adjudicating panel composed of 3 judges.

The High Court shall express its opinion through a reasoned opinion no later than thirty days from the moment the submission is filed.

The High Court, in its decision for the determination of the competence, shall provide the necessary instructions on the conducted trial and its continuation by the court that is declared to be competent.

CHAPTER IV
RULES ON DETERMINING THE VALUE OF THE LAWSUIT

Article 65

The value of the lawsuit is estimated at the moment of its filed to the court. Requests presented in the same process against the same person are put together including matured interest, expenses and claimed damages.

When it is requested by several persons or against several persons, the fulfilment of an obligation by shares, the value of the lawsuit is determined by the entire obligation.

Article 66

The value of the lawsuit related to the existence, validity or dissolution of a legal relation of obligation is determined on basis of that part of the ratio which is under dispute.

If the lease contract of immovable things has terminated, the value is determined on basis of the amount of requested rent, but if there are contests on the continuation of the lease contract, the value is determined by adding up the lease payments for the contested period.

On a division of property, the value is determined by the value of the requested part.

Article 67

In case of request for a periodic sustenance obligation, when title is objected, the value is determined on basis of the total amount which should be given over two years.

In cases related to life rents, when title is objected, the value is determined by the sum of the values for twenty years, whereas in case of temporary rents, the value is determined by the annual sums requested for up to ten years.

Article 68

When a sum of money or a movable thing is requested, the value is determined on basis of the indicated amount or, of the declared value by the plaintiff. In the absence of the indication or declaration, it is accepted that the determination of the value is in the competence of the court.

The defendant may object the value declared or assumed as above, but only at the beginning of his defense.

Article 69

(Amended by Law no. 8812, dated 17.5.2001, article 10)

In the case that the lawsuit claims an immovable property or incorporeal rights (rights in rem) thereon, the value of the lawsuit shall be determined by the market value of the property or of the rights claimed.

Article 70

The value of the lawsuit objecting the obligatory execution is determined by the pretended credit for which the lawsuit is filed. The value of the lawsuit of a third person who objects the obligatory execution depends on the value of the things for which the objection is made.

CHAPTER V
DISMISSAL OF JUDGE, REQUEST FOR DISMISSAL

Article 71

Criteria to be nominated as a judge are determined by law.

Article 72

Cases for dismissal of the judge

The judge is obliged to withdraw from a case when:

1. he has an interest in the case or in another dispute which is related to it in the trial.

2. he or his spouse has kin relations to the fourth degree or in-law to the second degree, or is related by obligations of child adoption, or lives together in a permanently with one of the parties or attorneys.

3. he or his spouse is in legal conflict or in enmity or in relations of credit or loan with one of the parties or one of the representatives.

4. he has given advise or has expressed opinion on the case in trial or has participated in the trial of the case in a different level of the process, has been questioned as a witness, as expert or representative of one or the other party.

5. he is guardian, employer of one of the parties, administrator or has another task in an entity, association, society or other institution which has interests in the case in trial.

6. in any other event when, according to concrete circumstances, serious reasons for partiality are verified. The request for resignation is presented to the chairman of the respective court who decides. The chairman of the Court of Appeal decides on the presentation of the resignation of the chairman of the district court, and the Chairman of the High Court decides on the request of the chairman of the Court of Appeal.

The parties are notified on the content of the request.

Article 73
Withdrawal of judge from trial of case
(Amended second sentence by Law no. 10052, dated 29.12.2008, article 3)

The judge who on his conscience assesses that there are reasonable causes not to take part in the revision of a case, requests the chairman of the court to be replaced. When Chairman of the court deems relevant the request orders his replacement with another judge through lot.

Article 74
Procedure for dismissal of the judge
(Repealed paragraph V, VI by Law no. 8812, dated 17.5.2001, article 11)

In cases where the resignation of a judge is mandatory, each of the parties may request the exempt of the judge.

The request, signed by the respective party or its representative, must be deposited with the court secretariat when the announcement of the judge or judges that shall examine the case is made public, or if not, immediately after the announcement of the judge or judges that shall try the case.

Later submission of the request is permitted only in the instance that the party has received information on the grounds of dismissal, or if the judge has inappropriately expressed biased opinion of the facts and circumstances pertaining to the trial during the execution of his duties, although no later than three days from receipt of information.

The request must contain the grounds of dismissal, documents and other available evidence.

Article 75
Competence for examination of the request
(Amended by Law no. 8812, dated 17.5.2001, Article 12; amended and added by Law no. 122/2013; amended by Law no. 38/2017, Article 11; Paragraph II and Paragraph III amended by Law no. 44/2021, Article 6)

The request for the dismissal of a judge is examined in consultation chamber in a session by another judge of the same court. The appeal against the decision to accept or reject the request for dismissal is allowed together with the final decision.

Regarding the request recusing the judge of the court of appeal, the decision is made by another judge of this court, other than from the judges of the trial panel to which the judge, being requested to be recused, belongs. The decision shall be final.

Regarding the request for recusing the judge of the High Court, the decision is made by another judge of this court, other than from the judges of the Chamber to which the judge, being requested to be recused, belongs. The decision shall be final.

Requests to dismiss judges assigned to decide on the dismissal are not accepted.

The judge, whose recusal has been requested, shall be entitled to submit his opinion in writing in connection with this request.

In these cases, the adjudication shall not be suspended, but the judge cannot give or take part in the giving of the decision, until the issuance of the decision to declare inadmissible or to reject the request for recusal.

The Constitutional Court, in Decision No. 11/2013, repealed Article 75 of the Code of Civil Procedure (CCP), reading as follows: "*The request for the recusal of judges shall be examined in a hearing by the same panel that is adjudicating the case*". with the following reasoning:

> The assessment by the judge himself of the request for his own recusal.
>
> The Court finds that such a procedural arrangement raises doubts regarding the impartiality of the judge or judicial panel from the very moment the request for recusal is filed, as it is difficult for the parties to expect the judge himself to assess whether or not he is influenced by objective or subjective factors in the adjudication of the case. Regardless of any efforts the judge may make to remain objective, it is difficult for this to be perceived as such

by the parties. It is precisely this lack of trust on the part of the parties that may lead to a belief that they will not have a fair legal process, since the judge fails to instill that sense of assurance.

Paragraph 28.

The Court reiterates that when a particular case is being adjudicated, and there exists a legitimate reason to doubt the impartiality of a judge, the perspective of those raising such a claim is relevant; however, decisive remains the determination of whether such doubt is objectively justified (See Decision No. 23/2008 of the Constitutional Court). Precisely the decision regarding whether the doubt is justified or not cannot be made by the same judge against whom the impartiality claim is raised. In this respect, the Court finds that the provision contained in the first sentence of Article 75 of the CCP is not in compliance with the principle of adjudication by an impartial court, as provided in Article 42(2) of the Constitution.

Article 76
Sanctions on a request deemed unacceptable
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 13 and Law no. 38/2017, article 12)

The request for exception is deemed unacceptable in cases when it is not made in accordance with the procedure and timeframe provided in Article 74 of this Code.

The decision, which declares inadmissible the request or rejects the recusal of the judge, shall contain the relevant court costs, as well as a fine of up to 50,000 ALL for a natural person and up to 100,000 ALL for a legal person, charged on the party, which through abuse, has lodged a wrongful request.

CHAPTER VI
COURT SECRETARIAT

Article 77
Duties of the court secretary
(Added paragraph III by Law no. 8812, dated 17.5.2001, article 14)
(Amended by Law no. 122/2013, article 5)

In the instances and manners provided by law, the court secretary files

for all the effects, the authentic activities of the court, parties and other participants involved in the process. The secretary participates in all court activities involving mandatory record taking.

The secretary records the cases, forms the case files, including there all documents or certified copies, as by law, and enters immediately the date when the documents were filed, maintains them, compiles the communication and notifications envisioned by law or by the court and carries out other duties related to the judicial proceedings.

The secretary issues, against payment, copies of the compiled documents, of recordings made with audio or audio-visual means, of their full or partial transcript, as well as original extracts of typed or hand-written documents.

Article 78
Court employee
(Title amended, amended and added by Law no. 38/2017, Article 13)

The court employee participates in the court session and takes measures for the implementation of orders, follows the procedure for the notification of the acts and performs either task related to the court process.

The court employee shall be responsible for the regular conduct of notifications. He/she shall make arrangements to give effect to the necessary enquires surrounding the address of the person the notification is addressed to, with the public registers, state administration authorities, family and relatives, the last domicile or residence of the person the notification is addressed to or by conveyance of other eventual sources.

The queries of the court employee are binding on the persons being addressed to. The latter have to respond within the timing set out in the query. The court employee shall, with regard to these arrangements, draft a report which he/she submits to the court.

Article 79
Responsibility for damage caused
(Repealed by Law no. 8812, dated 17.5.2001, Article 15)

Article 79/a
State Advocate's Office
(Added by Law no. 8812, dated 17.5.2001, article 16)

The State Advocate's Office exercises representation in cases provided by law. The court, which tries a case for which by law representation and defense is the authority of the State Advocate's Office, shall order the notification of its actions to the latter, with the aim of enabling the State Advocate's Office to participate in the trial.

The United Chambers of the Supreme Court, in their unifying decision no. 13, dated 24.03.2004, addressed for legal unification the following matters:

1. In the adjudication of a request to oppose enforcement actions, is the summoning of the parties a mandatory requirement, or is it left to the discretion of the court (Article 610/2 of the Code of Civil Procedure)?
2. If the summoning is discretionary, what factors should the court consider in deciding whether to summon the parties (creditor and debtor)?
3. Must the decision be notified to a party that was not present at the hearing? Can a party who was absent from the hearing appeal the decision (Article 611/2 of the Code of Civil Procedure)?
4. Must the State Advocate be notified in such proceedings when one of the parties is the state or a public institution (Article 79/a of the Code of Civil Procedure)?
5. When an enforceable judicial decision designates two or more creditors for the same object of enforcement, and one creditor seeks enforcement while another opposes it, how should the bailiff proceed with enforcement?
6. In cases where a limited liability company (sh.p.k.) is established with a statute specifying a fixed amount of initial capital in cash, may the partners, in the context of a dispute, assert that funds not formally deposited into the company should nonetheless be considered part of the company's capital, even though those funds have not been previously allocated or deposited by each partner, nor has an increase of capital been approved by a decision of the general meeting of partners?

The United Chambers of the Supreme Court held that:

The summoning of the parties cannot be interpreted as an unrestricted prerogative of the court, and even less as a procedural act whose legal basis renders it immune from challenge or review by higher courts. Given that the legislator has explicitly provided for the possibility of summoning and the participation of the parties in such proceedings, the United Chambers find that the court is obliged, in every case involving a challenge to the actions of a judicial enforcement officer, to assess - based on the specifics of the case - whether the summoning of the parties is necessary. Where the court determines that there are circumstances and justifications warranting such summoning - as in the case at hand - it must order that the parties be summoned.

From the content of Article 79/a of the Code of Civil Procedure, it follows that when the court is reviewing a case in which the representation and defense of one of the parties is legally assigned to the State Advocate, the court is required to ensure that all procedural acts are duly notified to the State Advocate. Only through such notification can the State Advocate be afforded a genuine opportunity to participate in the proceedings for the purpose of fulfilling its role in defending the legal interests of the state in the cases defined by law.

The judgment affirms that while certain procedural measures - such as the summoning of parties - may be within the discretionary authority of the court, this discretion must be exercised in a reasoned and case-specific manner. In circumstances involving the state or public institutions, procedural safeguards, including the obligation to notify the State Advocate, must be strictly observed in order to guarantee effective legal representation and the protection of public interests.

CHAPTER VII
THE EXPERT
(Repealed the articles 80-83 by Law no. 8812, dated 17.05.2001, article 17)

TITLE IV
THE PROSECUTOR
(Repealed the articles 84-89 by Law no. 8812, dated 17.05.2001, article 17)

TITLE V
LODGING OF LAWSUIT

CHAPTER I
PARTIES

Article 90
Definition

Parties on a civil trial are physical or juridical persons on behalf of or against whom the trial takes place.

No one may represent the rights of others in a civil trial, unless otherwise is provided by the law.

Article 91
Capacity to act

Persons that freely exercise their rights, which should be respected by others, have capacity to act in a civil trial.

Persons who do not have the capacity to act in a civil trial may participate in trial only when they are represented in conformity with provisions regulating their capacity.

Article 92
Representation in trial

Juridical persons participate in trial through his representative in conformity with legal provisions.

Article 93

Persons, having capacity to act, may perform all procedural actions themselves except when law provides differently.

Article 94

When the person, who must be represented in trial in conformity with the second paragraph of Article 91 of this Code, is absent and there are justified reasons which require a quick performance of certain procedural actions, a special guardian may be appointed until the case is attended by the person who is designated to represent him.

It is acted in the same way for the designation of a special guardian for the represented person when there is a conflict of interest with the representative.

Article 95

No one can make valid on his name the right of another person in a civil legal process, except when expressly provided by law.

CHAPTER II
REPRESENTATIVES

(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 126)

Article 96
Providing representatives with power of attorney

(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 17)

Representatives with the power of attorney of parties can be:

a) private lawyers;

b) spouses, the linear descendants and ascendants, and siblings;

c) legal graduates and other authorized employees of state institutions or of other legal persons;

ç) persons that the court allows to act as representatives in a case;

d) other persons for whom it is allowed by the law to be representatives of the parties.

The following cannot serve as representatives of parties:

a) persons that have not reached 18 years of age;

b) persons who have had their capacity to act, legally removed;

c) private lawyers, during suspension from legal practice;

ç) judges and prosecutors.

The power of attorney may be general or specific. Power of attorney is put forth in writing in accordance with the provisions of the Civil Code as well as verbally before the court examining the dispute

Article 96/a
Representation in the High Court
(Added by Law no. 38/2017, article 14)

1. Representation of parties before the High Court shall be only through an advocate.

2. This provision shall not apply in cases where representation is made by the State Advocacy Office in accordance with the law.

Article 97
Rights of the representative during legal proceedings
(Amended by Law no. 8812, dated 17.5.2001, article 126)

When parties are represented in court by a representative, the representative may perform and acquire in the interest of the party, all actions necessary to the process that are not prohibited by law.

In any event, a representative may not perform actions resulting in the disposal of rights, unless he has explicitly obtained the right to do so.

Article 98
Abrogation and renunciation of power of attorney
(Amended by Law no. 8812, dated 17.5.2001, article 126)

Those represented may abrogate the power of attorney at any time and the representative may renounce the position at any time; however, the abrogation and renunciation shall not have consequences for the other party until the representative is substituted.

Article 99

(Amended by Law no. 8812, dated 17.5.2001, article 126)

The party or its representative, provided the latter has the necessary authority to exercise the right of the representative via power of attorney, may appear in trial without the presence of any other representative, unless the law provides otherwise.

CHAPTER III
TASKS OF PARTIES AND OF ATTORNEYS

(Amended by Law no. 8812, dated 17.5.2001, article 126)

Article 100

(Amended by Law no. 38/2017, article 15)

Parties and their representatives have the obligation that during the judicial proceeding to behave in good faith and with honestly.

Article 101

Parties and their representatives should not use inappropriate or offending expressions in the documents presented to the court and in the discussions during the legal process.

The court may order inappropriate or offending expressions to be stricken in any phase of the trial and in its final decision may assign in favor of the offended person and charge the author of the offence or of the inappropriate expressions an amount of lek as compensation for non-property damage when the offending expressions are not related to the subject of the dispute.

CHAPTER IV
PARTIES LIABILITY FOR COSTS AND DAMAGES DURING THE LEGAL PROCESS

Article 102

Constitution of court costs

(Amended paragraph II by Law no. 8812, dated 17.5.2001, Article 19; amended by Law no. 38/2017, Article 16)

1. Court costs consist of fees and other costs necessary to adjudication.

2. Court fees, their types, rates, and other issues related to them, shall be regulated in a specific law.

Article 103
(Repealed by Law no. 38/2017, article 17)

Article 104
Manner of assessment
(Repealed by Law no. 38/2017, article 18)

Article 105
Prepayment of court costs
(Added paragraph II by Law no. 8812, dated 17.5.2001, Article 21; amended by Law no. 38/2017, Article 19)

1. Costs for witnesses, bailiffs, experts, translators and for inspection of items or inspection *in situ*, shall be prepaid by the party that requested them to the sum specified by the court. The court, taking in account the circumstances of the case and the wealth situation of the parties, by decision, imposes on one or both parties the costs, regardless of which of them requested the questioning of witnesses, the performance of expertise, the availability of translators or the inspection.

2. This decision is immediately enforceable by the enforcement service.

Article 105/a
(Added by Law no. 8812, dated 17.5.2001, article 22)

Witnesses, experts and translators are entitled to receive back the expenses they have made for their appearance in court as well as remuneration for taking a leave of absence from their workplace.

Experts shall also be entitled to remuneration for their service.

The amount of expenses and remuneration of witnesses and experts is determined by the Council of Ministers.

Article 105/b
(Added by Law no. 8812, dated 17.5.2001, article 23; amended by Law no. 38/2017, article 20)

The persons, according to the provisions for the fee are exempt from payment of this tax, shall also be exempt from payment of the other court costs. In these instances, the costs shall be covered by the relevant fund foreseen in the State Budget.

Legal persons that according to the law "On court fees" are exempt from the payment of the fee, shall pay the other court costs.

Article 106
The burdened party
(Amended by Law no. 8812, dated 17.5.2001, article 24; Law no. 38/2017, article 21)

The fee, the other court costs as well as the remuneration of a lawyer, in case there was one, that were paid by the plaintiff, shall be charged to the defendant to the extent of the part of the lawsuit that was endorsed by the court. The fee and the other court costs, from the payment of which the party has been exempt in accordance with article 105/b, shall be charged to the other party to the extent of the part of the lawsuit that was endorsed by the court.

The defendant is entitled to request payment of court costs incurred, in proportion to the unendorsed part of the lawsuit.

The defendant is entitled to request payment of court costs incurred, even in the event of the decision for dismissal of adjudication.

Article 107
(Amended by Law no. 38/2017, article 22)

Where the litigant or their representative has caused, without reasonable cause, delays in the adjudication of the case, the court *ex officio* may impose an additional court fee, as per the provisions of the law 'On court fees'.

When the defendant through his behavior has not given cause to the bringing of the lawsuit, the court costs shall be charged to the plaintiff even if the lawsuit is accepted.

Article 108
(Amended by Law no. 8812, dated 17.5.2001, article 25)

When the case is settled amicably, court costs shall lie to each party that made them, unless there is agreement to the contrary.

Article 109
(Amended by Law no. 8812, dated 17.5.2001, article 26)

The third person who makes a secondary intervention shall not be bound to or charged with payment of court costs.

Article 110

(Amended by Law no. 8812, dated 17.5.2001, Article 27; amended by Law no. 38/2017, Article 23)

1. Direct recourse may be taken due to the wrong assessment of the value of the lawsuit and to the wrong calculation of the fees and other courts costs.

2. The appeal against the decision does not suspend the enforcement of the court decision.

TITLE V
LEGAL MEANS OF DEFENCE

(Repealed art 111-114 by Law no. 8812, dated 17.5.2001, article 28)

TITLE VI
PROCEDURAL DOCUMENTS, NOTIFICATIONS AND TIMESCALES

CHAPTER I
DRAFTING OF THE LEGAL DOCUMENTS

Article 115

The drafting of legal documents

(Amended title by Law no. 8812, dated 17.5.2001, article 29)

Procedural documents, for which the law does not require the use of standardized templates, can be conducted in the most appropriate way for the purposes required.

Article 116

The language used in the drafting of legal documents

(Added title by Law no. 8812, dated 17.5.2001, article 30)

Procedural documents are written in the Albanian language.

In cases where persons giving testimony do not speak the Albanian language or for the translation of documents written in a foreign language, the court shall request the services of a translator.

If the translator fails to appear without legitimate reason, the translator shall be ordered to appear by the court. The translator has a penal and civil responsibility parallel to that of an expert.

Article 117
Content of procedural act

Unless otherwise provided for by the law, the summons to trial, the statement of claim and the countersuit should indicate the court, the parties, the subject, the legal grounds of the request and the conclusions as well as the date of drafting and should be signed by the party which presents the act or by its representative both in original and copies for notice.

Article 118
Court records
(Amended by Law no. 8812, dated 17.5.2001, article 31, Law no. 122/2013, article 6; amended by Law no. 38/2017, article 24)

The single judge or the presiding judge must ensure that record is kept through an audio or audiovisual mean of the hearing and of any judicial procedural action outside the hearing. If it is not possible to keep a court record by audio or audio-visual recording, an accurate typed or handwritten summary is prepared.

The court record shall indicate:

a) Location where the procedural judicial action takes place;

b) Time when the procedural judicial action takes place;

c) Composition of the panel of judges and name of the court secretary;

ç) Data of the participants in trial; and

d) Invited persons, who failed to appear, as well as, if known, the reason of their absence.

The court record should describe the procedural actions carried out in the course of the trial and reflect word by word:

a) All claims and objections of the parties and third parties;

b) The accurate summary of every explanation and written claim submitted by the party;

c) Questions and statements of persons taking part in the trial, including witnesses and experts;

ç) Evidence taken, including the content of the written evidence which has been submitted, tapes, slides and films;

d) All decisions and orders issued by the court during the trial; and

dh) All final claims of the parties.

When the court record is typed or handwritten in the form of a summary and one of the parties asks the court to include in the record parts from the statements of the other party, the court must take this request into account.

When the court record is typed or handwritten in the form of a summary, it is signed at the bottom of each page by the court secretary, and by the presiding judge at the bottom of the document, immediately after the hearing, and it is included in the case file.

The court records are an integral part of the court file and are kept for as long as the case file is kept. Detailed rules on maintaining and archiving the court records are established by order of the Minister of Justice.

Article 118/1
Transcript of audio or audio-visual court records
(Added by Law no. 122/2013, article 7)

Transcript of audio or audio-visual court records is done by the court secretary or technicians contracted by the court and who act under the court secretary's supervision.

The court records are transcribed when:

a) It is requested by the members of the panel of judges;

b) It is requested in writing, by the parties in trial or other interested persons, upon approval by the presiding judge, and upon payment of the respective fees, which are established by order of the Minister of Justice.

Transcript of court records may be done for all the hearings of a trial, for special hearings or parts of them, as requested by the person who asked for the transcript.

Transcript may be requested even before the court has ruled on the case.

The transcript is attached to the case file without prejudice to the court records kept according to Article 118 of this Code.

CHAPTER II
INVALIDITY OF ACTS

Article 119
Proclamation of invalidity

The procedural act, which has not been made in the form expressly required by the law, should be proclaimed invalid.

The act should also be proclaimed invalid when it lacks the essential data for the achievement of its aim.

The invalidity cannot be proclaimed when the act has achieved the aim for which it is destined.

Article 120
(Amended by Law no. 38/2017, article 25)

The invalidity of a procedural act cannot be proclaimed without the request of the party, unless otherwise provided by the law.

Only the party in whose interest the law provides an element of procedural act, can reject the invalidity of the act for the lack of that element. The rejection should be raised in the first hearing after the announcement, or immediately when notified during the adjudication.

The invalidation cannot be rejected by the party that has caused it or by the party that has tacitly waived.

Article 121
Partial invalidity

The invalidity of an act is not relevant with regard to previous acts when they are independent from it.

The invalidity of a part of an act does not affect the other parts which are independent. When the shortcoming of a procedural act hinders a certain effect, the other effects produced resulting from it, for which it has been made, are valid.

Article 122
Invalidity of notice

Notice is invalid when the provisions related to the manner and the person to whom a copy of the act should be delivered is not applied, or

when there is full uncertainty as to the person or the date of such notice.

Article 123
Invalidity of court decisions
(Amended by Law no. 8812, dated 17.5.2001, article 126)

The invalidity of court decisions that are subject to revision by the Court of Appeal or are subject to a claim at the High Court is assessed in accordance with the restrictions and the regulations pertaining to the grounds of appeal.

Article 124
Renewal of the procedural document
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 126; Law no. 38/2017, article 26)

A court that declares a procedural document to be invalid shall, where possible, take action for the complete or partial renewal of the procedural document.

In cases when invalidity of a procedural document is a result of a fault of the secretary, bailiff or representative, the court, by decision, shall charge the costs of the renewal of the document in question.to the person accountable.

The court within the decision on the dispute shall, upon the request of the afflicted party, order the person accountable for the invalidation to compensate the damage caused.

CHAPTER III
DECISIONS OF THE COURT

Article 125
Intermediary decisions
(Amended by Law no. 8812, dated 17.5.2001, article 32)

Intermediary decisions are issued by the court during the court session to respond to claims and to ensure that the trial is performed in accordance with the provisions of this Code.

Article 126
Final decisions
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 33)

The final ruling, settles the case in merits and, is provided by the court at the end of the trial.

The final ruling, as well as the rulings that finalise the civil judicial proceedings, provided in Article 127 of this Code, shall be issued, "In the name of the Republic" and each one shall contain the legal basis on which the settlement of the dispute rests, analysis of the evidence and the manner of the settlement.

Article 127
Non-final decisions

Non-final decisions are the decisions that cease the case by which the court or the judge, in cases provided in this Code, terminate the court civil process without settling the case fundamentally as well as any other decision, which without settling the case fundamentally, terminates the initiated court proceeding.

CHAPTER IV
NOTICES

Article 128
Notification of acts
(Amended by Law no. 122/2013, article 8; Law no. 38/2017, article 27)

Notification of the acts is done by the means envisioned in this chapter. The judge or the chairperson of the judicial panel shall follow and supervise the notification process, that is carried out by court employees appointed for its execution.

Article 129
Summons to the court
(Amended by Law no. 122/2013, article 9; amended and added by Law no. 38/2017, article 28)

The summons to the court are made by notification of a writ, which should contain information on the court which has issued it, the name and family name of the summoned person, time and venue of the court session, the dispute for which the person is being summoned, the time of

notification of the act, as well as the legal consequences if the summoned person fails to appear in court.

The court, when deeming it useful and when the party or the third party has given its prior consent, orders that the summons are to be made by means of electronic communication, according to the rules established in this chapter.

When a person is under detention, or serving a sentence of imprisonment, the court shall serve the notification to the place of execution of the measure or sentence, ordering the relevant authorities to accompany the person to the court, when they want to take part personally in the trial. In these cases, the court shall repeat the notification of the person for every hearing, unless they request the continuation of the trial in absentia.

When the selection of an address for notification to the court is expressly provided in the contract of the parties for all disputes arising from this contract, the court may carry out the notification service in that way.

The parties or third parties, are obliged to inform the court for any subsequent change of their address and electronic contact data or those of their representatives. Violation of this obligation shall make the claim for invalidity of notice unacceptable.

This provision is applicable to notification services at any stage and instance of adjudication.

Article 130
Rules on written notification of acts

(Amended paragraph II by Law no. 8812, dated 17.5.2001, Article 34; Amended by Law no. 122/2013, article 10; Law no. 38/2017, article 29)

The written notification is done by the court employee or the postal service used for summons or other acts which must be notified to the summoned person, wherever he is.

Notifications for persons in the military service are made through the head of the unit from which he depends.

Notifications for public legal persons are made to their headquarters, or through delivery to the head of the institution or to persons in charge for receiving acts.

Notifications for private legal persons are made to their headquarters, or through delivery to the representative or to the persons in charge for receiving acts and, in their absence, to another person who works at the headquarter of the legal person.

When the written notification is done by the postal service, the court employee writes on the original writ, and on the copy, the name of the post office which delivered the act to the recipient by registered mail. The receipt must be attached to the original writ and included in the case file.

Where the person, the notification is addressed to, rejects the reception of notification, does not know to sign or cannot sign, the judicial employee or the postal service employee shall make the respective note on the act due to be served and, to the extent possible, establish that by way of signature of a present witness. The notification in such a case shall be considered to be completed.

Article 131

(Amended by Law no. 122/2013, article 11; Law no. 38/2017, article 30)

When it is not possible to make the notification in conformity with the above provision, it is made in the domicile or residence of the summoned person or in the office or the place where he exercises handicraft, industrial or commercial activity.

If the summoned person is not found in any of these places, the notification is delivered to a person of the family who has attained sixteen years of age and, when no one of them is present, the notification should be handed over to neighbors who accept to deliver it by hand to the summoned person to his office or place of work, except when the summoned person is a minor, under sixteen years of age, or does not have capacity to act.

When it is not possible to make the notification in conformity with the above paragraph, the copy of the notification is delivered to the doorman of the dwelling, the office or the place of work.

In all these cases the person who receives the notification should sign the original or its copy undertaking the commitment to deliver it to the summoned person. In the copy held by the court employee, it should also be noted relationship of such person with the summoned person, the actions and searches carried out by the court employee for delivering the act to the summoned person, as well as the place and time of delivery.

Article 132

(Amended by Law no. 38/2017, article 31)

1. Where the family members of the person the notification is addressed to or the neighbours to whom the notification is handed over to be delivered to the person the notification is addressed to, refuse to receive the notification, do not know to sign or cannot sign, a notice is made on

the copy of the notification and, when possible, it is also confirmed by the signature of a witness present.

2. In this case the notification is considered served.

Article 133

(Amended by Law no. 10052, dated 29.12.2008, article 4; Law no. 122/2013, article 12; Law no. 38/2017, article 32)

1. Anyone can appoint an authorized person to receive notifications. The appointment act shall be filed with the court.

2. The court employee shall register the authorized person in the national electronic portal, which is created and administered by the High Judicial Council.

Article 133/a

(Added by Law no. 38/2017, article 33)

The notification shall be served by public announcement, if:

a) the notification has not been possible to be affected under the provisions of Articles 129, 130, 131, 132 and 133 and after the judicial employee has made all necessary arrangements to find the address of the person, the notification is addressed to; or

b) The person, the notification is addressed to, has no residence, domicile, has not chosen any residence or has not nominated any representative in the Republic of Albania and the notification of that person has not been able by one of the ways provided by the law.

Article 133/b

(Added by Law no. 38/2017, article 33)

1. The notification by public announcement shall be effected by way of posting the notice at the court of the place where the dispute shall be adjudicated, at the place where the person, the notification is addressed to, has his/her residence or domicile, as well as in the administrative unit in which he/she has the residence or domicile.

2. Where the person, the notification is addressed to, is a private legal entity, the notification shall be effected by way of posting it at the seat being registered on the respective public registers.

3. The notification shall also be published on a specific portal on the

official internet website of the court and/or on a national electronic portal being established to this effect.

4. The notification by public announcement shall denominate:

a) Litigants;

b) Identity of the party being notified by announcement and the address of residence or domicile;

c) Date and time of hearing, the court adjudicating the dispute, the subject matter of the dispute and the data surrounding the act subject to notification;

ç) The official or office where the party can take the act subject to notification, as well as the consequence ensuing due to the omission of the party, the notification is addressed to.

5. This notification shall stay posted for not less than 20 days.

Article 134
Announcement of acts of a foreign state

Notification of acts coming from institutions of a foreign state to the direction determined by the authorities of that state, is made through their simple delivery according to the rules provided in this Code.

Article 135

The announcement of acts of a foreign state is done through the Ministry of Justice, which passes them on to the district court of the place where the announcement should be made. When there is a reciprocal agreement providing legal aid the dispatching for notification and the notification is made directly between the competent governmental bodies of two states or in any other manner stipulated in the agreement.

When the Ministry of Justice assesses that the request for notification of an act is not in conformity with the rules provided in this Code, or in the respective international agreement, it returns the documents back to the governmental bodies of the sending state giving full specifications on the necessary adjustments.

Article 136

The party requesting the notification should follow the request with the payment necessary for the notification, in conformity with existing international agreements, except when the law or those agreements

stipulate the exemption from payment in advance of expenses.

Article 137

The act is notified in the language of the country from which it is sent, but the receiver who does not know the language in which the act is made has the right to refuse the notification and to request that it should be translated into the Albanian language or into another language known by the receiver on behalf of the requesting party and at its expense.

Article 138

Records are held or a certificate is filled in on the notification of the act, in which it is obligatorily mentioned the place, the date of notification, the person to whom the act was delivered, his relationship to the person to whom the act is addressed, the signature and, if it is the case, also the reasons which have hindered the notification.

Article 139

For documents on the execution or non-execution of the requests of the announcement is acted upon in the same manner as for sending the requests for notification.

Article 140

The execution of a request of the announcement or transmission may be refused by the competent Albanian authorities when the sovereignty or security of the state is jeopardized, as well as when they have not been presented in conformity with the provisions of this Code.

Article 141
Rules on electronic notification of acts
(Amended by Law no. 122/2013, article 13; Law no. 38/2017, article 34)

Electronic notification of acts is done by means of electronic communications, by delivery from the court employee of the writ, or other acts which should be notified to the person determined as a recipient, to his contact details.

Such notification must be reflected in a special record which must indicate the contact details and the means of electronic communications used for the notification, the exact date and time of the communication, the person with whom the communication was made and the purpose of the notification.

The record of this communication is drafted by the court secretary and it is signed by him and the court employee in charge of carrying out the notification. This record is included in the case file.

Detailed rules on the electronic notification are established by order of the Minister of Justice.

Article 141/a
(Repealed by Law no. 122/2013, article 14)

Article 142
(Repealed by Law no. 122/2013, article 14)

Article 143
(Repealed by Law no. 122/2013, article 15)

If the notification cannot be made in writing or by electronic means, the rules envisioned in Article 133 of this Code shall apply.

Article 144
Other means of notification
(Amended by Law no. 122/2013, article 16)

Notification may be done by any other means which guarantees a regular notification, as long as the recipient personally confirms in writing that the notification has been received.

Article 144/a
Role of bailiffs in the process of notification to the court
(Added by Law no. 10052, dated 29.12.2008, article 6; amended again by Law no. 38/2017, article 35)

The rules provided for in this chapter for notifications shall also be applied by judicial bailiffs, when that is ordered by the court. In this case, judicial bailiffs shall conduct the same tasks as those of court employees. Judicial bailiffs shall not act as a court employee during the phase pf execution of the executive title.

CHAPTER V
TIME LIMITS

Article 145

The time limits for the performance of procedural acts are determined by law and, if permitted by law, also by the court.

The time limits may be preclusive if the law expressly provides so.

Article 146

The time limits set by the law are ordinary, except when the law expressly provides them to be rigid.

The rigid time limits cannot be shortened or extended, even with the consent of the parties.

Article 147
Extension of time limits

Before the end of the time limit, the court may extend by decision a time limit which is not rigid before the end of the time limit. The extension cannot be longer than the initial time limit, except when there are particularly grave reasons which legitimize the request.

Article 148

Calculation of time limits

When the time limit has been determined in days and hours, the day and hour, on which the event has started or the time on which the time limit shall start, are excluded.

The time limit determined in weeks, months or years terminates with the passing of that day of the last week, or of the last month which has the same name or number with that of the day when the time limit started. When such a day is lacking in the last month, the time limit terminates with the passing of the last day of that month.

When the last day of a time limit is a holiday, the time limit terminates on the working day following the holiday.

Article 149

The last day of the time limit continues until its 24-th hour, but, when a procedural act is to be made or any request or other act is to be presented to the court, the time limit terminates at the moment when the official working day ends.

The time limit is not considered passed when the request or act is sent by mail even on the last day of the time limit.

Article 150
Time limits and suspension of trial

When the trial is suspended all the other time limits which have started to count but have not terminated are suspended too. In this event the suspension of the time limit starts from the moment in which the event has happened which has triggered the suspension of the trial.

Article 151
Reinstatement of the time limit
(Amended by Law no. 38/2017, article 36)

Where the parties or the prosecutor has, due to reasons emerging out of force majeure or reasons which could not have been predicted by them, exceeded the legal procedural time limit or that set out by the court, they may request from the court the reinstatement of procedural time limits, unless the time limits have preclusive character.

Article 152
(Added sentence in paragraph II by Law no. 10052, dated 29.12.2008, article 7)

The request to reinstate the surpassed time limit is examined by the court to which also the documents, which justify or for which the reinstatement of the time limit is requested, must be presented. A separate appeal may be made against the decision of the court. The other party is summoned during the consideration of the request.

A special appeal may be filed against the court's.

The Administrative Chamber of the Supreme Court, in its unifying administrative decision no. 00-2023-4279 (259), dated 07.07.2023, held that:

> Pursuant to Articles 152 and 458 of the Civil Procedure Code, in all administrative proceedings where a request for the reinstatement

of a lapsed time limit for appeal is submitted, the applicant is required to attach to the request the procedural act of the appeal for which the reinstatement is being sought.

SECOND PART
TRIAL AT FIRST INSTANCE

TITLE I
FILING OF LAWSUIT, STATEMENT OF DEFENCE, PRELIMINARY ARRANGEMENTS

(Title amended by Law no. 38/2017, article 37)

CHAPTER I
LAWSUIT DRAFTING, PRESENTATION TO COURT, LAWSUIT NOTIFICATION AND PREPARATORY ACTIONS

(Amended by Law no. 8812, dated 17.5.2001, article 35)

Article 153
Drafting of lawsuit

Adjudication of a case in court begins with the presentation of the statement of claim in writing.

Article 154

(Repealed last paragraph by Law no. 8812, dated 17.5.2001, article 36)
(The last two paragraphs added by Law no. 122/2013, article 17; Law no. 38/2017, article 38)

1. The statement of claim is written in Albanian language and must contain:

a) the court before which the lawsuit is filed;

b) first name, father's name, surname, domicile or residence of the plaintiff and of the defendant and of the persons representing them respectively, if any. If the plaintiff or the defendant is a legal entity, its denomination as it appears in public registers, showing the seat or the headquarters, where the notification shall be served;

c) a definition of subject of the lawsuit;

ç) an indication of concrete facts, circumstances, documents and other evidence, grounds on which the lawsuit is based on, as well as the concrete claim of the plaintiff;

d) value of the lawsuit, if the subject of the lawsuit is calculable.

2. In addition to these criteria, the plaintiff in the statement of claim shall clearly indicate and/or attach:

a) his or his representative's electronic contact details, if any, which the court may use to notify him;

b) the list of persons he wants to be summoned to court in the capacity of witnesses, by clearly specifying the first name, father's name and last name, and their full address and the facts required to be proven by them;

c) the evidence required to be taken by the respondent and third parties, determining the reasons and location of these evidence;

ç) the type of expertise required to be carried out during the trial;

d) first name, father's name, surname or the denomination, if it is a legal entity, as well as the full address of third parties required to be summoned in this capacity;

dh) the act certifying the payment of the claim fee, in accordance with the law.

Article 154/a
Filing the statement of claim
(Added by Law no. 8812, dated 17.5.2001, article 37)

The statement to claim is filed in court by the plaintiff or by his representative equipped with power of attorney. The statement of claim may also be filed in court via mail.

The lawsuit is appointed to the judges by drawing of lots.

When the statement of claim does not fulfil the criteria detailed in this chapter, the single judge shall return it to the plaintiff at the time of its filing or he shall be notified in writing to make the necessary amendments, and after the date of filing of the lawsuit has been recorded, a time limit scale shall be determined for the completion of the necessary amendments. Until this date the lawsuit shall be inactive.

When the plaintiff fails to make the necessary amendments within the specified time limit, the statement of claim shall not be regarded as filed and shall be returned to the plaintiff together with the other acts.

Against the decision of the single judge for the return of the statement of claim, a special appeal may be filed.

When the amendments of the statement of claim have been rectified within the specified time limit, it shall be regarded as filed from the date of its registration in the court. The same rule shall be applied in the case that the defects of the statement of claim are discovered during adjudication of the case.

Article 155
Preliminary notification of the lawsuit
(Repealed by Law no. 38/2017, article 39)

Article 156
Acts that are attached to the lawsuit
(Amended by Law no. 38/2017, article 40)

Jointly with the statement of claim must be filed:

a) power of attorney, if the statement of claim is filed on behalf of the plaintiff by his representative;

b) copies of the statement of claim and of the proving acts, in as many copies as there are defendants, as well as for the instance foreseen in article 197 of the Civil Code.

With the filing of the statement of claim is paid the fee, as well as the necessary costs for the notifications or the other court services.

To the statement of claim is attached the summons in which are indicated the date of appearance before the court, as well as the instruction that on that date must be accurately defined the evidence that the plaintiff claims that should be heard by the court.

Article 157
Presentation of lawsuit
(Repealed by Law no. 8812, dated 15.7.2001, article 38)

Article 158
Preliminary arrangements of the single judge
(Amended by Law no. 122/2013, article 18; Law no. 38/2017, article 41)

1. The court, after evaluating the lawsuit as without defects, pursuant to articles 154/a and 156 of this Code, orders the plaintiff to issue the statement of defense, not later than 30 days from notification of the statement of claim. The same rules shall apply also in the event of the filing of the lawsuit by the main intervener or of the countersuit.

2. The court informs the defendant in connection with the necessary contents of the statement of defense under paragraph 3 and 4 of this article, in connection with the opportunity to request legal aid and with the legal consequences of not issuing a statement of defense.

3. The statement of defense shall be drafted in Albanian and shall contain:

a) the court before which the statement of defense has been submitted to;

b) the first name, father's name, surname, place of residence or domicile of the plaintiff and defendant, as well as persons representing them respectively, if there is any. If the plaintiff or the defendant is a legal entity, its denomination as it appears on the public registers, displaying their seat or main office, where notification shall be carried out;

c) indication of concrete facts, circumstances, documents or further evidence, as well as arguments objecting the lawsuit, if any.

4. In addition to these requirements, the defendant clearly declares in/or attached to his statement of defense:

a) his electronic contact data or those of his representatives, as appropriate, which the court may make use of to notify them;

b) the list of persons required to be summoned to proceedings in the capacity of witnesses, specifying clearly their names, father's name and surname, and their full address, as well as the facts required to be proved by them;

c) the evidence required to be taken from third parties or from the plaintiff, specifying the rationale and the location of evidence;

ç) the types of expertise required to be carried out during the trial;

d) the name, father's name, surname or the denomination of the legal

entity, as well as the full address of the third parties required to be summoned to the trial in this capacity;

dh) the countersuit, when requesting to exercise this right, under Article 160 of this Code.

5. The defendant shall notify the court regarding any subsequent change in the address and electronic contact data for himself and his representative. The violation of this obligation shall render the claims surrounding the invalidity of the notification inadmissible.

6. The statement of defense, along with the evidence and the other acts attached, shall be communicated to the plaintiff by the court. The plaintiff has the right to present other evidence, in addition to those defined in the statement of claim, only when they relate to new claims of the defendant, laid out in the statement of defense.

7. Objections and evidence that may be raised or submitted only with the request of the parties, shall not be accepted by the court subsequently, if they have not been submitted together with the statement of defense.

Article 158/a
Decisions of the judge during preliminary arrangements
(Added by Law no. 8812, dated 17.5.2001, article 39; amended by Law no. 10052, dated 29.12.2008, article 8, Law no. 122/2013, article 18; Law no. 38/2017, article 42)

1. In case that from the preliminary study of the acts, the judge notes the absence of jurisdiction or competence, or that the parties are lacking the capacity to act or that the representation is at conflict with the law, then he shall respectively decide that the case falls outside their judicial jurisdiction, transfers the case for adjudication to the competent court, takes a decision in accordance with the provisions of this Code, or sets out a time limit to the parties to rectify their acts of representation.

2. The judge shall, by decision, without conducting a preliminary hearing, conduct the following arrangements:

a) exempt the plaintiff from payment of the fee in the instances provided for by law and a request has been made by the plaintiff;

b) set out the evidence that will be examined during the judicial hearing and appoint an expert in the relevant field of expertise, who is then notified to the parties;

c) decide on the taking of evidence and information from third parties,

when the parties declare and prove that they cannot take them by themselves;

ç) decide to the taking of measures to secure the lawsuit, in exceptional or urgent instances, under Article 205 of this Code;

d) if necessary, decide to secure the evidence, according to Articles 292 to 295 of this Code and proceed to take them in a special hearing under Article 296 of this Code;

dh) decide on the suspension of proceedings in instances set out in Article 297 of this Code;

e) decide on the dismissal of adjudication in instances set out in Article 299 of this Code;

ë) decide on the joinder of lawsuits into one court case in the instances provided for in this Code or for the separation of claims;

f) decide on the request for summoning of the third person in the proceedings, in compliance with Article 193 of this Code.

Article 158/b
Preparatory hearing
(Added by Law no. 8812, dated 17.5.2001, article 40; (Amended by Law no. 38/2017, article 43)

1. The judge shall always appoint the hearing for preparatory arrangements whenever he is receiving the requests for the main and secondary interventions, for procedural replacement, procedural transition, for changing or increasing the cause, decreasing or changing the scope of the lawsuit, filing a countersuit and assigning the expert.

2. Regarding the other decisions made by the judge in the course of preliminary arrangements, preparatory hearing shall be held as long as summoning and hearing the parties is deemed necessary by the judge and in other cases provided by law.

Article 158/c
The order for scheduling the hearing
(Added by Law no. 38/2017, article 44)

1. The judge, immediately after performing all necessary preliminary and/or preparation actions, shall issue an order setting the hearing, which is notified to the parties or third parties.

2. The order setting the hearing shall include:

a) Date, time and venue of the hearing;

b) The parties required to be questioned by the court under Article 182 of the Code and, where appropriate, the witnesses, who must participate in the hearing;

c) The expert or group of experts appointed by the judge;

ç) Notification and the manner of notification of the parties and persons, who must attend the hearing.

3. The notification served to the witnesses, interpreter, and expert should contain a warning of sanctions, according to the law, for failure to appear at the hearing, without a lawful reason.

Article 158/ç
Actions of reconciliation
(Added by Law no. 38/2017, article 44)

1. The judge shall make every effort to settle the dispute amicably during the preparatory stage, when the nature of the case allows that. The judge, where appropriate, shall order the parties involved to appear before the court.

2. At each stage of the trial, the court shall inform the parties about the possibility of settlement of the dispute through mediation and, if they give their consent, it transfers the case to mediation.

3. When reconciliation is reached without starting the hearing, a record is held, which is signed by the parties. The judge approves the reconciliation by way of decision.

4. In case of submission of the act-agreement for reconciliation or resolution of the dispute through mediation, the court decides to approve it, if the latter is not inconsistent with the law.

5. Where the reconciliation is reached in the hearing, the terms of the agreement shall be reflected in the court record. The court shall give its approval decision, but in any case, it should not be against the law.

6. Against the decision to resolve the dispute by reconciliation or mediation, or the rejection of the reconciliation, can be appealed separately.

Article 159
Joinder of claims

In a statement of claim may be presented many claims if the court has authority for all the claims. When the court assesses that their joint consideration shall cause visible difficulties in the conduct of adjudication, it decides that they be considered separately.

Article 160
Countersuit
(Amended paragraph III by Law no. 8812, dated 17.5.2001, article 41; amended paragraph II by Law no. 38/2017, article 45)

The defendant is entitled to file a countersuit if the claim of the countersuit is related to that of the lawsuit or if between them mutual compensation is possible.

The countersuit may be submitted as long as the order for scheduling the court hearing is not issued, in accordance with Article 158/c of this Code.

In the case that the amendments of the countersuit are not rectified within the timeframe specified by the court, the countersuit shall be returned.

CHAPTER II

SUITS BY SEVERAL PLAINTIFFS AGAINST SEVERAL DEFENDANTS

Article 161
(Added letter 'c' by Law no. 10052, dated 29.12.2008, article 9; added letter 'ç' by Law no. 38/2017, article 46)

Lawsuit may be brought jointly by many plaintiffs or against many defendants (co-participants) if:

a) they have joint rights or obligations on the subject of the lawsuit;

b) their rights or obligations have the same basis from the point of view of the fact or of the law;

c) in case trial has started and the plaintiff founds that his claim extends also against another person, he may extend the claim even against the latter, summoning him as defendant;

ç) If a decision cannot be given except against several persons in the case of mandatory joint judgement, the latter should be summoned

as defendants in the same process. When the judge determines that the mandatory joint judgement is incomplete binding on the defendants, he shall leave the plaintiff a time limit up to 20 days to fix it, according to letter «c» of this article and Article 154 / a of this Code. If the plaintiff does not act within the above time limit, the court shall decide to dismiss the proceedings.

Article 162

Each of the co-participants is represented in an independent manner against the opposing party in order that his procedural actions or omissions do not bring neither damage nor benefit to the others.

When, due to the nature of the juridical relations which are in conflict or due to a legal provision, the effect of the decision which shall be given is extended to the entire co-participants, the procedural actions which have been carried out by some co-participants have effect also on other co-participants who have not appeared in court or who have not undertaken any action in the designated time limit.

The United Chambers of the Supreme Court, in their unifying decision no. 901, dated 14.07.2000, addressed for legal unification the following matters:

1. Does the court hearing the case have the authority, contrary to the plaintiff's disposition, to summon a third party as the defendant and impose upon that third party the obligation initially claimed by the plaintiff against the originally summoned defendant?
2. What are the defining characteristics and distinctions between the procedural instruments used by the plaintiff and the defendant in civil proceedings - namely: the statement of claim, the defense (rebuttal), and the counterclaim?

The United Chambers of the Supreme Court held that:

Pursuant to Article 160(1) of the Code of Civil Procedure: "*The defendant has the right to file a counterclaim when the claim of the counterclaim is connected to the main claim, or when mutual claims may be set off*".

Within the meaning of this provision, a counterclaim constitutes the defendant's claim brought against the plaintiff, submitted during an already initiated proceeding, provided that the judicial investigation has not been concluded.

In order for a defendant's claim to be qualified as a counterclaim and be admissible for joint adjudication alongside the main claim in the same proceedings, it must satisfy at least one of the two substantive criteria set out in Article 160(1) of the Code of Civil Procedure:

– either a nexus (connection) with the main claim,

– or the potential for mutual set-off of obligations.

Given that both the main claim and the counterclaim may independently be subject to separate proceedings, depending on the court's discretion, it follows that where they are adjudicated together in a single proceeding, the final judgment may, as appropriate, result in one of the following outcomes:

a) acceptance of both the main claim and the counterclaim, including, where applicable, a decision on mutual set-off of obligations;

b) acceptance of the main claim and dismissal of the counterclaim;

c) dismissal of the main claim and acceptance of the counterclaim;

ç) dismissal of both the main claim and the counterclaim.

In the case under review, the court neither issued - nor was it in a position to issue - a decision corresponding to any of the aforementioned outcomes.

Furthermore, where a claim and a counterclaim are joined in a single proceeding through a procedural decision on joinder (Article 55 of the Code of Civil Procedure), third parties holding independent claims distinct from the object of the main claim or the counterclaim cannot be summoned as plaintiffs or defendants.

Such third parties may only be procedurally joined in consolidated litigation with either the plaintiff/counter-defendant or the defendant/counter-claimant where the conditions for joinder of parties under Articles 161–162 of the Code of Civil Procedure are met.

Article 162/a
Adjudication procedure for small amount claims
(Added by Law no. 38/2017, article 47; paragraph I partially and point 4 amended by Law no. 44/2021, article 7)

1. Lawsuits up to twenty times the minimum wage nationwide, arising from contractual relationships shall be adjudicated by the court in a summary trial.

2. Examination of the case in a summary trial before the court shall occur in writing. The court may conduct a verbal judicial hearing, if deemed necessary.

3. Regarding the adjudication of the above-mentioned lawsuits, only the rules contained in the second paragraph of Article 172, Article 236/a, Article 285/a, 310, 315, 460, 510 of this Code shall apply.

4. If the value of the lawsuit is less than twenty times the minimum wage at the national level and the value of the counter-lawsuit exceeds twenty times the minimum wage at the national level, the trial shall be conducted according to the general provisions for ordinary trial.

CHAPTER III
STEERING THE PROCEEDINGS

(Repealed Articles 163-164 by Law no. 8812, dated 17.5.2001, article 42)

CHAPTER IV
FINES

Article 165
Non-appearance in court without reasonable causes
(Amended by Law no. 38/2017, article 48)

When the witness or expert who has been summoned to court does not appear, without reasonable cause, the court punishes him with fine from 50 000 to 100 000 ALL and orders his enforced appearance.

Article 166
Objection to give evidence
(Amended by Law no. 38/2017, article 49)

When without a reasonable cause the witness objects to give evidence or the expert to give his opinion, the court punishes him with fine from 50 000 to 100 000 ALL.

Article 167
Failure to appear in trial of document or thing by the third person
(Amended by Law no. 38/2017, article 50)

When a third person who is not a party does not accept to present a document or a thing which is proved to be by him and which has been requested to him by the court is punished with fine from 50 000 to 100 000 ALL.

Article 168
Disobeying an order of chairman of the hearing
(Amended by Law no. 38/2017, article 51)

When the persons who participate in the trial of the case as well as other persons who assist do not obey the orders of the chairman of the court hearing, they may be punished with fine from 50 000 to 100 000 lekë by court decision. In cases where a prosecutor and/or an advocate does not obey orders of the court under this Article, the court has an obligation to notify responsible bodies of their discipline.

Article 169
Objection to punishment decision

The persons who have been punished by fine, in conformity with the above-mentioned provisions, within three days may present to the court who has punished them, the request for the removal of the punishment, by indicating also the causes.

When the court finds those causes grounded, it revokes the decision of the punishment with fine as well as the order of enforced appearance. It may also only diminish the designated fine. Otherwise, it rejects the request.

The time limit to present the request starts from the date of the court session and in the cases provided in articles 165 and 167 from the date of the announcement of the punishment decision.

The decision given by the court in the above-mentioned cases is irrevocable and no appeal is permitted against it.

TITLE II
CONSIDERATION OF THE CASE

CHAPTER I
PREPARATORY ACTIONS
(Repealed by law no. 8812, dated 17.5.2001, article 43)

Article 170
(Repealed by Law no. 8812, dated 17.5.2001, article 43)

Article 171
Conciliation actions
(Repealed by Law no. 8812, dated 17.5.2001, article 42)

Article 171/a
The right of the court to conduct legal proceedings and the means of their application
(Added by Law no. 8812, dated 17.5.2001, article 45; amended by Law no. 38/2017, article 52)

The court shall exercise all rights defined in this Code that are essential to the development of the trial process.

The court shall determine the sessions and timeframes within which parties and other ordered persons must perform the procedural legal actions and any other actions the court requests.

The court administers the judicial proceeding via decisions and orders. Decisions and orders announced during a court session shall be considered as acknowledged by the parties in attendance or those who should have attended the session. Decisions announced outside the session and decisions subject to special appeal are communicated to the interested parties by the secretary of the session no later than three days from their announcement.

Article 171/b

(Added by Law no. 8812, dated 17.5.2001, article 46; amended by Law no. 38/2017, article 53)

Interim decisions and orders issued by the court during the court session must be justified and must not prejudice the resolution of the case.

Decisions may be altered or revoked by the court that announced them unless:

a) the decisions have been announced on the basis of an agreement between parties whereby they have deliberated between themselves. However, the court retains the right to revoke decisions if it is so stipulated in the agreement;

b) a separate appeal can be filed against the decisions, as defined in this Code;

c) the law declares that the decisions cannot be appealed.

CHAPTER II
STEERING THE PROCEEDINGS AND THE COURT SESSION

(Title added by Law no. 8812, dated 17.5.2001, article 44)

Article 172

(Amended by Law no. 122/2013, article 20)

The consideration of the case before the court is made orally, but the parties may present in writing their explanations and claims with regard to the case in trial.

Written explanations and claims submitted by the parties to support their claims and conclusions are attached to the case file or to the court record when it is typed or handwritten.

Article 173
Closed door proceedings

(Amended by Law no. 8812, dated 17.5.2001, article 47)

Minors under 16 years of age are not permitted to attend in camera proceedings unless they are called by the court.

The court can forbid the attendance of the mass media and the public for a part or for the entirety of the trial if:

a) it is in the interests of morality;

b) it is in the interest of public order;

c) it is in the interest of safeguarding classified information or matters of national security;

ç) it is in the interest of minors or the protection of the privacy of parties participating in the trial;

d) trade secrets or industrial inventions are mentioned which, if made public, could harm interests protected by law;

dh) their publication could, to a degree, as assessed by the court, prejudice the interests of justice in particular circumstances.

The verdict shall be publicly spelled out.

Article 174
Opening and development of court session
(Amended by Law no. 38/2017, article 54)

On the designated day and time, the parties or their representatives are obligated to notify the court on their presence.

Before the start of the court session the secretary or the court employee calls the parties or their representatives and invites them to take the designated places.

Article 175

After the court session is declared open the court verifies the presence of the parties and investigates the causes if one or both of them have not appeared in the session.

If the non-appearance has occurred because of illness or any other legitimate cause, the court adjourns the trial to another day.

The United Chambers of the Supreme Court, in unifying decision No. 4, dated 01.02.2006, have addressed for legal unification the following matters:

1. When proceedings on the main claim are suspended, does the review of the counterclaim follow the same course, or should the counterclaim be adjudicated as a separate claim?

2. In the present case, the plaintiff was removed from the courtroom for disrupting order, and subsequently, his legal representative voluntarily exited the hearing without declaring a withdrawal of the claim filed on his behalf. The Chamber observes that the absence or unjustified departure of the plaintiff from the hearing may be interpreted as a waiver of the main claim (although, in this case, it was not the plaintiff himself but his representative who left). In light of this, should the court consider such departure as a waiver of the main claim, or should it have first ascertained the plaintiff's intent by summoning him to a subsequent hearing?

3. Even when the court has ruled to proceed in the absence of a party, does the party concerned - namely, the plaintiff - have to be notified of the continuation of proceedings regarding the counterclaim?

The United Chambers of the Supreme Court held that:

> In a proceeding where it has been determined that the main claim and the counterclaim are to be examined concurrently, the suspension of the proceedings on the main claim - regardless of the reason - does not automatically entail the suspension of the counterclaim's examination. On the contrary, the counterclaim may continue independently, and the court, in its final decision, must adjudicate both the main claim and the counterclaim, as though they were being tried in two separate but parallel proceedings.
>
> Moreover, in order to uphold the principles of judicial efficiency and to protect the independent legal interest of the counterclaimant - specifically, in preventing, through no fault of his own, the expiration of statutory deadlines that would apply if the counterclaim were pursued as a separate action - the counterclaimant retains the procedural right to request the continuation of the counterclaim even after the main claim has been suspended. This procedural will was, in the case at hand, explicitly expressed by the counterclaimant following the court's issuance of the interim decision to suspend the proceedings on the main claim.
>
> The mere fact that the plaintiff initiated the proceedings by filing the original claim does not constitute sufficient grounds to terminate a proceeding already underway. Furthermore, in proceedings where the main claim and the counterclaim have

been joined, the original initiative of the plaintiff does not negate the procedural standing of the counterclaimant to act independently and to define the conditions under which the civil process may continue - thus effectively resulting in two separate, opposing claims, albeit between the same parties.

Accordingly, the United Chambers of the Supreme Court conclude that neither the plaintiff's removal from the courtroom pursuant to Article 178 of the Code of Civil Procedure, nor the departure of his legal representative from the hearing - even if not accompanied by a formal clarification - can be considered a waiver of the main claim within the meaning of Article 299(b) of the Code of Civil Procedure, nor can it be construed as a non-appearance in the procedural sense. In this context, the term "*non-appearance of the parties*", as set out in Articles 175 and 179 of the Code of Civil Procedure, must be interpreted in accordance with its proper procedural definition.

Article 176
Legalization of parties to the case

The court verifies the legalisation as parties of the persons or of their representatives present and if it is the case invites them to fulfil the acts and documents which result with shortcomings, including here also the acts related to representation and if it considers it necessary determines a time limit to the parties.

Article 177
Administration of court investigation by the chairman of the session
(Added words at the end of paragraph II, by Law no. 122/2013)

The chairman of the court session administers the court investigation and the talks of the parties in conformity with the rules provided in this Code.

When any of the parties makes remarks against the actions of the chairman of the court session, by claiming that their rights are being limited or violated, these must be reflected in the minutes when a summary of it is typed or handwritten.

Article 178
Ensuring law and order in a court session

The chairman of the court session takes care for the maintenance of

law and order in the session. He has the right to order the persons who disturb the order and quietness of the development of the court session to leave the court room. When the attorney or the advocate do not obey the orders of the chairman of the court session, the court notifies the relevant organ of the Attorney's office or the managing council of the chamber of advocates and requests from them the taking of disciplinary action. The court may decide to adjourn the session until another attorney or advocate is designated.*

Article 179
Legal consequences for parties that fail to attend
(Amended by Law no. 38/2017, article 55)

1. Should both parties, without any reasonable cause, fail to appear at a preliminary hearing or a judicial hearing and it turns out that they have been regularly notified, the court shall decide to dismiss the proceedings.

2. Should the plaintiff, without any reasonable cause, fail to appear at a preliminary hearing or judicial hearing, and it turns out that he/she has been regularly notified, the court shall decide to dismiss the proceedings, if the defendant has not filed a statement of defense. Where the defendant has filed a statement of defense, he/she may request that the trial proceeds in absentia for the plaintiff, and when the court considers that the defendant's request has been based on legitimate cause, the court shall continue the trial in absentia for the plaintiff.

3. Should the defendant, without any reasonable cause, fail to appear at a preliminary hearing or judicial hearing, and it turns out that he/she has been regularly notified, the court shall decide to dismiss the proceedings, if the plaintiff shall not request that the trial proceeds in absentia.

4. Unless otherwise provided by law, the court shall no more notify the party that decides to proceed in absentia.

Article 180
Announcement of adjudicating body and explanations by parties
(Repealed paragraph IV and V by Law no. 38/2017, article 56)

After the above-mentioned action have been performed, the composition

* Decision No. 4, dated 01.02.2006, of the UCSC establishes that the removal of the plaintiff by the court pursuant to Article 178 of the Civil Procedure Code (CPC), or even the departure from the courtroom by their legal representative - with or without explanation - cannot be considered as a withdrawal of the lawsuit (Article 299/b of the CPC) or as failure of the parties to appear as foreseen by Articles 175 and 179 of the CPC.

of the adjudicating body is announced and the preliminary claims of the parties are solved.

The court in the first court session requests the parties to give the necessary explanations, on basis of the facts claimed by them, by pointing out the issues which it considers necessary and beneficial for the trial of the case from the procedural point of view.

At first the plaintiff gives explanations with regard to the claims presented in the lawsuit, then the defendant and the other participants in the case. Each of them is obligated to determine the facts and evidence on which their claims and rebuts are based.

Repealed.

Repealed.

Article 181
Conclusion of trial by same adjudicating body
(Amended by Law no. 38/2017, article 57)

The court must organize the work in order that the trial of the case be concluded by the same adjudicating body.

When for legitimate cause, the composition of the panel shall change, the new member or members must have access to the content of the judicial process. The new member or members can request that judicial investigations be entirely or partially repeated.

Repealed.

Article 182
Appearance of parties in person

At any stage of the trial the court has the right to request that the parties appear in person in order to be questioned on circumstances it estimates that are important for the solution of the case, regardless of the fact that they have representatives or that the trial is conducted in their absence.

When despite the request of the court in conformity with the above paragraph the summoned party has not appeared without any legitimate cause or refuses to answer the questions asked, the court considers its attitude in harmony with the other evidence.

Article 183
Settlement of claims of parties

Regarding the claims presented by the parties in conformity with articles 180 and 182 of this Code, the court pronounces itself by means of a decision. In special cases, which present difficulties in trial it may adjourn the announcement of the decision up to three days.

The court, by decision, allows the acquisition of evidence when it is the case also the way of acquiring them. The refusal for acquiring the requested evidence must be reasoned by the court, without prejudicing the case.

Article 184
Replacement of parties

When during the trial emerges that the lawsuit is brought by a person who has no right to bring it, or is brought against a person against whom it must not have been brought, on the request of the interested party the court may allow the replacement of the first plaintiff or defendant by the plaintiff who enjoys the right to bring the lawsuit or by the defendant against whom the lawsuit must have been brought. For such replacement the court must first receive the approval of both parties and of the person who comes in their place as a party.

Article 185
Alterations to legal grounds and the subject of the lawsuit
(Amended by Law no. 8812, dated 17.5.2001; entirely amended by Law no. 38/2017, Article 58)

1. A plaintiff has the right, during preparatory actions, to submit a written request to change the cause of the lawsuit. The plaintiff, without changing the cause of the lawsuit, can increase, reduce or change its scope.

2. Only the scope of the lawsuit can be increased, reduced or changed at a court hearing, when such a need arises because of the evidence received at the court hearing.

3. When the above changes are made in absentia of the defendant or third parties summoned to the court, the changes must be communicated to them in writing.

4. Seeking of interests or other incomes of the scope of the lawsuit, shall not be considered as an increase to the scope of the lawsuit.

Article 186
Extension of evidence
(Amended by Law no. 38/2017, article 59)

1. Following the order of the single judge setting the hearing under Article 158 "c" of this Code, no new evidence can be claimed and no new facts can be alleged, unless:

a) The interested party proves that, not because of its fault, it was not able to present these facts and / or new evidence before;

b) The interested party can prove that it could not be aware of the new facts and/or evidence;

c) There is a public interest for admission of new evidence.

2. This provision does not apply to obtaining judicial or extrajudicial confession.

Article 187
(Amended by Law no. 38/2017, article 60)

The party that is declared in absentia can appear at any moment of the proceedings. It may require that procedural actions be carried out on its behalf regarding the judicial investigation held earlier, when proving the invalidity of the call to appear in court or the failure to appear for reasons independent of it.

Article 188

The decision of the court which accepts the request on the intermediate questioning or other requests in conformity with the above article is notified to the absent party in the time limits decided by the court. The other acts and actions are not subject to notification.

CHAPTER III
PARTICIPATION OF THIRD PARTIES IN CIVIL PROCESS

Article 189
Main intervention

Anyone may intervene in a court process which takes place between other persons, when he claims for himself the entire or part of the thing

or the right which is the subject of the lawsuit in consideration, or which is related to the conclusion of the trial, by bringing lawsuit against both parties or against one of them.

The United Chambers of the Supreme Court, in their unifying decision no. 74, dated 07.10.2002, unified the following legal matters:

A third party in a judicial proceeding exercises the protection of their economic rights through the plaintiff. For this reason, in seeking to protect those rights, the third party cannot be regarded as an adversarial party to the plaintiff. However, with respect to moral rights, the position of the third party, as the author, is autonomous - which means that the third party, should they so decide, holds a procedural status that entitles them to bring a claim directly against any person whom they allege has violated such rights.

The accurate determination of the legal relationship from which the conflict between the parties arises - through reference to the relevant substantive legal provisions - is a crucial and decisive step in establishing the standing (*locus standi*) of the plaintiff, the defendant, and any third parties, as well as in clarifying the cause of action and the object of the claim.

Pursuant to Article 189 of the Code of Civil Procedure, any person may intervene in a judicial proceeding between other parties when they assert ownership - either in whole or in part - of the subject matter of the dispute or a right related to the outcome of the judgment, by filing a claim against both parties or against one of them. In such cases, the intervention constitutes an independent claim, directed either against both parties or one of them, with demands that are distinct from those advanced by the original plaintiff in the pending proceedings.

If the third party seeks compensation for the violation of the author's moral rights, they may qualify as a principal intervener, by filing a direct claim against the defendant, "Albtelecom" sh.a., thereby removing the plaintiff from the procedural position with respect to that specific claim, since moral rights are exclusive and non-transferable, as recognized by the applicable legal provisions.

However, in the absence of such a distinction in the third party's claim - where the claim instead mirrors that of the plaintiff - they cannot be legitimized as a principal intervener. In such a case, the appropriate procedural mechanism would have been to request the substitution of the plaintiff.

In the present matter, the third party's economic interests are identical to those of the plaintiff, and these interests have been, and continue to be, represented by the plaintiff. Therefore, if the third party wishes to participate in the proceedings in relation to the same claim, they may do so only as a secondary intervener, either by joining the position of the plaintiff or by reaching an agreement to be procedurally substituted for the plaintiff.

In order to ensure the uniform application of the law by the courts with respect to the procedural positioning of principal and secondary interveners, this decision is accorded binding effect as a unifying decision, pursuant to Article 141 (2) of the Constitution.

Article 190

(Amended by Law no. 38/2017, article 61)

To intervene in a civil proceeding under Article 189 of this Code, the third party should submit a request together with the lawsuit, as long as the order setting the hearing has not been issued, under Article 158/c of this Code, fulfilling the requirements of Articles 154 and 156 of this Code.

The United Chambers of the Supreme Court, in their unifying decision no. 1029, dated 27.10.2000, held that:

…Amounts paid by the losing party in execution of court decisions that have subsequently been overturned by a final and binding decision must be returned to that party. Restitution shall be carried out by the Bailiff's Office that initially undertook and continued the compulsory enforcement procedures.

Under the former Code of Civil Procedure, Article 190(1) expressly provided:

"*When the new decision issued after the annulment differs from the first decision, which has been executed in whole or in part, the person who benefited is obliged to return all gains received from the execution of the previous judgment*".

Although this provision no longer appears in the current Code of Civil Procedure, this does not imply that such situations are to be resolved differently under the new legal framework.

By referring to Article 319 (2) of the current Code of Civil Procedure, which regulates the consequences of the annulment of a judgment previously enforced provisionally, the following rule is established:

"*In the event that, following the annulment of the initial decision, the claim is rejected and the new judgment becomes final, the initial prevailing party is obliged to return everything received by way of provisional enforcement of the first decision*."

Through a logical interpretation of this provision, it follows that in all cases where the new decision issued after annulment diverges from the original decision - whether the latter has been enforced in full or in part - the beneficiary is obligated to return all benefits received from the enforcement of the annulled decision.

As a general rule, the restitution of such benefits should be ordered in the new final decision issued following the annulment of the previous judgment(s). However, even where the court does not explicitly address the return of benefits derived from the (full or partial) execution of the overturned judgment, such restitution is considered legally implied and enforceable.

The Bailiff's Office, which carried out the full or partial enforcement of the overturned judgment, is required - upon request by the new prevailing party and in accordance with the procedure set forth in Article 511 of the Code of Civil Procedure - to initiate enforcement measures compelling the beneficiary to return all undue benefits received.

Article 191
Secondary intervention
(Amended by Law no. 38/2017, article 62)

Anyone may intervene in a court process which takes place between other persons when it is interested to support one or the other party with which it joins in trial in order to assist it. The request along with the probative acts, if any, may be exercised as long as the order for setting the judicial hearing has not been issued, under Article 158/c of this Code.

Article 192
Summons of third party
(Amended by Law no. 38/2017, article 63)

Each party may call into the trial of the case a person with which it thinks it has the case in common or from which may be requested a guarantee or compensation which is related to the conclusion of the case.

The third party is summoned by a writ which is presented in the preparatory session or to the court secretariat when the consideration of the lawsuit has started. The request is notified immediately to the judge who orders the notification of the third person, possibly without adjourning the designated court session.

The summon of the third party can be made as long as the order for setting the judicial hearing has not been issued in accordance with Article 158/c of this Code.

Article 193
(Amended by Law no. 38/2017, article 64)

Where the Court considers that the judicial proceedings should take place in the presence of a third party, which finds that it has interests in the case, the court shall call it as long as the order for setting the judicial hearing has not been issued, under Article 158/c of this Code.

The secretary notifies him by writ.

Article 194

The court accepts the participation of the third person into the civil trial by an intermediate decision.

A separate appeal may be made against the decision that rejects the participation of the third person.

Article 195
Procedural rights of third person

The third person has the right to perform all procedural actions which are allowed to the parties, except those which constitute the possession of the subject of the dispute.

With the consent of the two parties, the third person who has intervened himself or has been summoned to court may take the place of one of the parties for which he has intervened and that party may withdraw from the trial.

Article 196

The decision which is given after the secondary intervention or the summoning of the third person has effects against him with regard both to his relationship to the person who called him or for assisting whom he

has intervened and to his relationship with the opposing party.

Article 197

If the person who has offered guarantee appears in court and assumes to replace in the case the guaranteed person, the latter may request his withdrawal from the trial, by being represented in trail by the guarantor, if the parties do not object.

The court decides on this request but its decision on the grounds of the case extends its effects also on the guaranteed person.

Article 198
Withdrawal from trial of sued person

The person who is sued for the payment of an obligation or for the delivery of a thing or for the acknowledgement of a real right, on which has claims also a third person, has the right to call him in trial, in order for the case to be tried between the plaintiff and that person and to request from the court to withdraw from trial by accepting to pay the obligation or to deposit the thing or to recognise the real right in the place and in the manner determined by the court.

The withdrawal of the defendant from the trial is made by permission of the court.

When the third person does not accept to participate in trial, the cessation of the case is decided and the amount paid or the thing deposited is delivered to the plaintiff.

Article 199
Procedural assignment

When one of the parties dies, the case continues by or against its heirs.

When the party which is a legal person terminates, the case continues by or against the legal or natural person to whom are transferred the rights and obligations of the legal person who has terminated.

Article 200

When during the proceedings of the trial the right in conflict is assigned to another person by means of an act between living people or by means of a special title, the court process continues between the same parties who were at the beginning.

The person to whom is assigned the right in conflict may intervene or may be summoned in trial as a third person or may replace the party from which the right to the conflict was assigned, but only within the conditions provided in this Code.

The decision issued has effects also against the person to whom is assigned the right in conflict, except in the case when the right to ownership on the movable thing has been won in good faith (article 162 of the Civil Code) and in application of the rules for the registration of things.

Article 201
Withdrawal from the adjudication
(Amended by Law no. 38/2017, article 65)

1. The plaintiff in any stage of proceedings at first instance, may waive the trial of the lawsuit. Waiver shall have effect if the defendant admits it. However, the admission of the defendant is not required if he, at the time when the plaintiff submits a request to waive the trial, has not yet filed a statement of defense on the merits of the case.

2. The Court may decide to dismiss the trial even if there is no legitimate cause for the refusal of the defendant.

Article 201/a
Waiver of the right to sue
(Added by Law no. 38/2017, article 66)

A plaintiff, in any stage of the trial, may completely or partially waive the right to sue. In this case, the lawsuit shall be dismissed and the plaintiff has no right to file the same lawsuit again. Waiver of the right to sue before the Court of Appeal, consequently brings the reversal of the decision of the first instance court and the dismissal of the lawsuit.

CHAPTER IV
SECURING THE LAWSUIT

Article 202
When is lawsuit allowed to be secured
(Added words in the first paragraph by Law no. 10052, dated 29.12.2008, article 10)

On the request of the plaintiff, the court allows within 5 days the taking of measures to secure the lawsuit, when there are reasons to doubt that

the execution of the decision for the rights of the plaintiff shall become impossible or difficult.

The securing of the lawsuit is allowed when:

a) the lawsuit is based on evidence in writing;

b) the plaintiff gives guarantees to the degree and kind determined by the court for the damage that may be caused to the defendant by securing the lawsuit.

The United Chambers of the Supreme Court, in their unifying decision no. 10, dated 24.03.2004, have addressed for legal unification the following matters:

1. What are some of the "other appropriate measures" that may be taken to secure a claim, pursuant to this provision?
2. What is the meaning of the provisional measure of suspension of enforcement, and in which cases may it be granted?
3. Must the security measure under Article 206, point "b" of the Code of Civil Procedure always be conditioned upon a defined or definable material object of the claim?
4. In a civil case where the forced performance of a contractual obligation to act or to refrain from acting is sought, may security measures be granted under Article 206, point "b" of the Code of Civil Procedure?
5. If one party to a contract unilaterally terminates the agreement, does the court adjudicating the dispute have the power to order the reinstatement of the contract as a provisional measure? Can the prior contractual relationship be reinstated by means of a security measure?
6. May a security measure consist of an order compelling the defendant to perform the very act that the plaintiff seeks through the claim and which the defendant contests?
7. In other words, may the provisional security measure ordered by the court be identical to the substantive remedy sought by the plaintiff in the claim?
8. What should be the procedure for reviewing a request for a security

measure, and what should the decision contain and justify, in order to avoid the perception that the court has prejudged the merits of the case or is contributing to unnecessary delay in resolving the substance of the dispute?

9. Does the suspension of the execution of an administrative act under Article 329 of the Code of Civil Procedure constitute a security measure within the meaning of Article 206, point "b" of the Code of Civil Procedure?

10. Are there distinguishing features between security measures in purely civil cases and those involving the suspension of an administrative act subject to judicial review?

The United Chambers of the Supreme Court held that:

> Courts must not base decisions granting provisional security measures on facts, actions, or legal qualifications that pertain to the substantive adjudication and resolution of the case. The assessment of a request for such a measure must be carried out in a manner that avoids any appearance that the court has prejudged the main claim or lacks impartiality in its examination.
>
> As a result, a provisional measure may not serve to reinstate the prior contractual relationship between the parties as it existed before the dispute arose. More broadly, where a contract provides that either party may unilaterally terminate it under certain conditions (e.g., clause 13.3 of the agreement), the court hearing the case has no authority to preliminarily order the re-establishment of the contract. Reinstatement of a contract cannot be considered a security measure within the meaning of Article 206, point "b" of the Code of Civil Procedure. Such relief may only be granted through a final decision on the merits.
>
> These principles apply not only to contractual disputes, but to all civil cases involving the restoration of violated, infringed, or denied civil rights, and any associated claims for damages. Under no circumstances may the court, through a provisional measure, compel the defendant to perform the same act sought by the plaintiff in the claim and contested by the defendant. In other words, a provisional security measure may not duplicate the relief requested in the substantive claim.

As for the "other appropriate measures" referenced in Article 206, point "b" of the Code of Civil Procedure - beyond the suspension of enforcement - these are not exhaustively defined. Accordingly, the court retains discretion, on a case-by-case basis, to determine a measure it considers suitable and effective to protect the plaintiff's rights, provided that such a measure does not infringe upon the legitimate rights and interests of the defendant. However, even these discretionary measures must be conditioned upon a material object of the claim that is defined or capable of being defined.

For this reason, the court may authorize security through various forms of provisional measures, but only up to the amount equivalent to the value of the claim. In the case under review, the court should have first required the plaintiff to clearly identify the object of the claim relating to the request for compensation arising from the disconnection of service (signal interruption). The identification of the object of the claim serves as the foundational basis for determining the appropriate security measure.

Article 203

(Added second paragraph by Law no. 122/2013, article 23)

The securing of the lawsuit is allowed for all kinds of suits and at any stage of the trial, until the decision becomes irrevocable. The securing of the lawsuit is allowed also by the Court of appeal, when the lawsuit is being considered by it.

The securing of the lawsuit is not allowed when lawsuits are submitted during the phase of the decision execution, for which the fourth part of this Code applies.

Article 204

The securing of the lawsuit may be requested also before the lodging of the lawsuit in the court of the place where the plaintiff has his place of abode, or where the property is located with which the lawsuit shall be secured.

In this case the court determines a time limit of not more than 15 days within which the lawsuit must be presented to the court.

Article 205

(Amended by Law no. 38/2017, article 67)

The securing of lawsuit may be permitted for the entire lawsuit or only for parts of it, if the court finds them grounded, in conformity with the rules provided in article 202 of this Code. The request, as a rule, is considered in the presence of the parties, but in special or hasty cases, it may be considered in consultation chamber.

Article 206

Types of measures for securing lawsuit

(Amended letter 'b' of the first paragraph by Law no. 122/2013, article 24)

The securing of the lawsuit is made:

a) by sequestering the movable and immovable things as well as the credits of the debtor;

b) by other appropriate measures taken by the court.

The court may permit the securing of the lawsuit by some of the different types of the security measures, but always for a general amount not greater than that of the lawsuit.

Sequester cannot be placed on things which cannot be sequestered in conformity with article 529 of this Code.

Article 207

Change and replacement of measures for insurance of lawsuit

On request from one of the parties the court may substitute one security measure with another, after having heard first also the opposing party.

In this way is proceeded also when the court decides on the removal of the security measure, when it estimates that the cause for which it was taken has disappeared.

Article 208

Execution of measures for insurance of lawsuit

The decisions for securing the lawsuit are executed in conformity with the rule provided in this Code on the execution of the decisions on movable and immovable things.

Article 209
Appeal

Against the decision of the court which has decided the acceptance of the request for securing the lawsuit may be made a separate appeal for the change or removal of the security measure of the lawsuit.

The appeal against the above decision does not hinder the continuation of the consideration of the lawsuit.

Article 210

The appeal against the decision which allows the security measure does not suspend its execution.

The appeal against the decision by which the security measure is replaced or removed suspends its execution.

Article 211
Revocation of measures for insurance of lawsuit
(Amended first paragraph by Law no. 122/2013, article 22)

Failure to submit the lawsuit within the term determined by the court, and certified by the chief secretary, abolishes the measure for insurance of lawsuit.

When the refusal of the lawsuit or the cessation of the trial is decided, the court decides the removal of the security of the lawsuit, which is applied when the decision has become irrevocable.

The guarantee given in conformity with article 202 of this Code is returned to the plaintiff, in case the other party does not bring a lawsuit for the compensation of the damage suffered due to such a cause within fifteen days from the date the decision has become irrevocable.

Article 212
Legalization of measures for securing lawsuit

When in the final decision the lawsuit is accepted, the court decides also the legitimization of the security of the lawsuit.

When sequester has been decided as a security measure, it becomes executive sequester after the decision becomes irrevocable.

CHAPTER V
GENERAL RULES FOR ACQUIRING EVIDENCE

Article 213
Permission for evidence

In application of article 12 of this Code, the court, by decision, permits the parties to prove the facts on which they base their requests and claims, by presenting to the court only that evidence which is indispensable and is related to the case in trial.

Article 214
Court admission

Admissions made in court by the parties or by their representatives are estimated by the court without underestimating other evidence and the circumstances of the case.

Article 215
Delegation of authority

When the evidence must be taken outside the territory of the activity of the court, it delegates its competences to the court of the place where the evidence is, except when the parties jointly request to delegate one of the members of the adjudicating body for this purpose.

In the decision of the court shall be established a time-period within which evidence must be taken and is decided the next session for the continuation of the adjudication.

Article 216

Evidence is taken by the judge designated by the chairman of the court to which the request is addressed by reflecting the actions performed in minutes, which are sent to the court in the determined time-period.

The parties are free to participate in the acquisition of evidence.

The statements of parties and of the witnesses are taken in first person and after being read to the person making the statement, are signed by him.

Article 217

The judge proceeding with the acquisition of evidence, even when he is

delegated in conformity with article 215 of this Code, decides by decision all issues which emerge during the acquisition of evidence.

Article 218
Witness who cannot hear or speak

When questioning a person who cannot hear or speak, the court calls a person who understands the signs of the person who is questioned if the questioning cannot be made in writing.

Article 219
Legal assistance by courts of foreign countries

When it is necessary to perform a court procedural action outside the borders of the Republic of Albania, for the clarification of circumstances, assessment of facts, sending of a document or for other reasons which the court considers necessary for the clarification of the issue in trial, the court through the Ministry of Justice of the Republic of Albania requests relevant legal assistance to the competent organ of the other country.

When the juridical procedural action may be performed by the diplomatic or consular representation of the Republic of Albania, the request is sent to the latter.

The above request must designate the issues on which legal assistance is requested and must contain the necessary data for the fulfilment of legal assistance.

When between the two states there is an agreement on providing reciprocal legal assistance the provisions of that agreement are applied.

Article 220
Application of foreign law

In the event the application of the laws of a foreign country is necessary for the trial of a case, the court must make all efforts to find and apply them in conformity with their content.

When any effort of the court in conformity with the first paragraph of this article is not successful and none of the parties has been able to provide the court with the requested provisions, certified by the competent organs of the other state, the court decides in conformity with Albanian legislation.

Article 221
Legal assistance for courts of foreign countries

Albanian courts provide legal assistance to courts of other states on their request. Legal assistance cannot be provided when:

a) its provision does not comply with the basic principles of Albanian legislation in effect;

b) the object of the request is not under the competence of Albanian courts.

Article 222

The request for providing legal assistance, made by the court of a foreign state, must contain the conditions provided by the above article, be drafted in the Albanian language or be translated in this language and have the necessary expenses for translation attached. In the opposite case the court or the receiver may refuse the performance of the requested actions.

When between the two states there is an agreement on the reciprocal provision of legal assistance, the provisions of that agreement apply.

Article 223
Acquisition of evidence at third persons

On the request of the interested party the court may order the other party or a third person who does not participate in the case, to present in trial a document or another thing, when this is estimated as necessary by the court.

In this case the court gives the necessary instructions on the time, place and the manner of their presentation. The party which has requested the acquisition of the document is obligated to indicate in detail all the circumstances which make credible as to where the document is, its characteristics as well as the facts which shall be proved by this document.

The necessary expenses are paid in advance by the party which has made the request.

Article 224

The court may officially request from the organs of the state administration data in writing on acts and documents which are in that organ and which are necessary to be considered in the court process. When the data

requested constitute a state secret, the court requests the permission of the central organ under whose authority the state administration, where the requested data are, is. When the request is rejected the request of the party is considered statute barred.

Article 224/a

(Added by Law no. 8812, dated 17.5.2001, article 51; amended paragrapf II by Law no. 38/2017, article 68)

Should the assessment or clarification of facts pertaining to the case require specialist input in the fields of science, technology or art, the court may order the attendance of one or more experts.

The experts shall be chosen from an online register of licensed persons, which shall be administered and published by the Ministry of Justice, except for the conditions laid down in Article 224/d, paragraph 2 of this Code. The experts shall be appointed under the rules contained in this Code.

Article 224/b

(Added by Law no. 8812, dated 17.5.2001, article 52)

Experts shall be required to provide opinions in writing, but they can also be heard at the hearing and be questioned by the court as well as involved parties.

The opinion of the expert is not legally binding for the court and when the court has a view contrary to that of the expert, the court must then provide a detailed account of its opinion explaining the reasons for this in the final decision or in a decision issued during the trial.

Provision of legal opinions is not part of the mission of the expert.

Article 224/c

(Added by Law no. 8812, dated 17.5.2001, article 53; amended by Law no. 38/2017, article 69)

The expert is bound to fulfil all duties assigned by the court unless reasonable grounds are presented and are accepted by the court.

Failure to appear in court without legitimate reason shall result in the expert being forced to appear in court.

The expert shall only be exempt from participating in the trail in accordance with the conditions defined in Article 72 of this Code.

The request for disqualifying the expert shall be filed with the court reviewing the case, which decides on it.

Article 224/ç
Liability of the expert
(Added by Law no. 8812, dated 17.5.2001, article 54)

In the instance that an expert refuses to perform the duty they have been assigned, or provides the court with false information, the expert shall be held liable in accordance with the Penal Code.

If the expert causes damages to the parties or to other participants of the trial, the expert shall be obliged to compensate them.

Article 224/d
Electronic register of experts
(Added by Law no. 38/2017, article 70)

1. Ministry of Justice shall establish, administer and make available to the public an online register for experts. This register shall be split up into various sections to group experts referring to their field of expertise and the place of their work.

2. The judge shall appoint an expert off the online register, only when for the needs of the process, the expert is required to come from specific areas of expertise, for which the law does not provide for their licensing.

3. The Ministry of Justice accepts the registration of experts in the online registry, if they meet the following criteria:

a) Ten years of professional experience in a specific or similar field; Five years of professional experience of the same type shall be sufficient as long as the applicant has completed a professional training in the pertinent field;

b) Full capacity to act;

c) Be registered and have regularly fulfilled the obligations with the tax authorities.

4. The online register should provide a separate section, where the interested parties can evaluate the expert about his acts of expertise in the past, by using a scoring system.

CHAPTER VI
EXPERT AND ACT OF EXPERTISE
(Title changed by Law no. 8812, dated 17.5.2001, article 50)

Article 225
Manner of appointment
(Amended by Law no. 38/2017, article 71)

1. The expert shall be appointed by the court.

2. The decision on the appointment of the expert shall be served to him by the court secretary, the latter notifying also the date when he is going to attend the respective hearing.

3. The expert not admitting to assume this task shall notify the court, providing the respective arguments, at least five days prior to the hearing.

4. According to circumstances, the parties shall immediately request the disqualification of an expert, submitting the respective arguments.

Article 226
Taking the oath

Before the expert starts to perform his task, the court reminds him of the importance of the function for which he has been called and invites him to take the oath that he shall perform well and honestly the task assigned, with the only purpose of making the truth known to the court.

Article 227
Tasking and performance of expertise
(Amended by Law no. 38/2017, article 72)

1. The court, after receiving the opinion of the parties, shall assign cases to the expert on which his opinion has to be taken.

2. The decision on assigning the tasks to the expert should include:

a) Tasks assigned to the expert;

b) Deadline for submission of the act of expertise to the secretary by the expert, in as many copies as the parties are and a copy for the file of the trial, when the expertise cannot be done instantly;

c) The subject whom the prepayment of the expert's fee is charged to and the deadline for the execution of this liability;

ç) Ordering third parties, where appropriate, to allow the expert to perform the tasks assigned by the court, through surveillance, under the provisions laid down in Title I, Part I, Chapter X of this Code.

3. The Court invites the parties to receive their copy of the act of expertise and after considering the opinion of the parties, shall assign the latter a time period within which they may submit written opinions and observations on the act of expertise.

4. The expert has the right to have access to the case materials, take part in the hearings, ask questions, give explanations and require the parties to obtain information from third parties within the limits necessary for performing the task.

5. An expert may be assisted by his assistants, but the responsibility for the accuracy of expertise remains with him.

6. When under the court decision to perform the expertise, it is necessary for the expert to have access to things, evidence, accounts and other documents, the parties may be present and may submit to the expert written opinions and remarks of their specialists, who can be called as witnesses or requirements related to the fulfilment of the task, but always within the competences determined in the decision of the court.

7. In case of obstruction without reasonable cause, the expert shall inform the court which, when deemed necessary, shall order the state police to support him in carrying out the tasks set by the court.

Article 228
Performance and assessment of expertise

When expertise is performed in the presence of the court or of the delegated judge, minutes are held, but the court may request from the expert to give the conclusions of the expertise in a written report.

When the expertise is performed without the direct participation of the court, the expert must draft a written report on the expertise performed, in which must be reflected also the remarks and the requests of the parties. The possible statements of the parties mentioned in the report are estimated by the court taking into consideration the rules provided in article 29 of this Code.

The report must be deposited with the secretariat in the time-period determined by the court.

Article 229
Repetition of expertise

When it is observed that the expertise is with shortcomings or unclear as well as when there are differences of opinion between experts, the court, on its own or on the request of any of the parties, may request additional clarifications or may order the performance of a new expertise, by calling other experts.

Article 230
Presentation of conclusions of expertise

The opinion of the expert must be justified.

When experts are of the same opinion, the conclusions of the expertise may be presented by one who is appointed by them; when there are differences of opinion between the experts, each of them must present himself his opinion. Questions may be asked to the experts after they have presented their opinion.

CHAPTER VII
WITNESSES TESTIMONIES
(Amended by Law no. 8812, dated 17.5.2001, article 55)

Article 231
Limits of permission of evidence by witness

Evidence by witness is permitted in all cases, except when the law demands a written matter for the validity or the proving of a juridical action.

Article 232
(Amended second sentence by Law no. 10052, dated 29.12.2008, article 11)

Evidence by witness is not permitted against or beyond the content of an official or private act which constitutes a full evidence. It is not permitted also to prove by witness the agreement of parties on the change of contract or termination by payment or relief from obligations in money which result from a contract which is made or must have been made in writing.

Article 233
Cases of permitting evidence by witness

The rules provided in the above two articles are not applied and evidence by witness is permitted:

a) when the document demanded by the law on the validity or the proving of the juridical action is lost or is destroyed without the party being guilty for it;

b) when there is a start of an evidence by written matter. Start of an evidence by a written matter is called any written matter which results from the one towards which the search is addressed and from the content of which emerges that the alleged fact is almost true;

c) when the juridical action made by a written matter has been performed:

- contrary to the law, by fraud;
- under the influence of deceit, threat or because of an agreement in bad faith entered into between the representative of one party and of the other party;
- under the influence of great necessity by the party.

ç) when due to circumstances in which a juridical action is performed or due to the special relationship between the parties it has not been possible to acquire evidence by written matter.

Article 234

Against or beyond the content of a juridical action made by written matter, the third person is free in the presentation of evidence. When one of the contracting parties claims that the juridical action has been performed only in appearance without the parties having the purpose of creating legal consequences, or to cover another court process which the parties wanted, the evidence by witness is permitted in the events when there is evidence by written matter issued by the other party or statements made by it in front of state institutions, by which it is made credible that the court process is performed only for appearance.

Article 235
Prohibition for questioning as witness

There cannot be questioned as witness:

- the representatives of the parties in case, on circumstances on which they have received knowledge from the persons they represent because of their duty as representatives;

- persons who due to physical or mental disabilities are not capable of a just understanding of the facts which are important for the case and to testify regularly;

- spouses yet non-divorced, children, parents, grandparents, or cousins, in direct or indirect line up to the second degree, except when the case is related to personal and family problems, as well as minors under the age of fourteen, except when their sayings are indispensable for the solution of the case.

These persons decide themselves whether they shall testify and they cannot be punished for refusing to testify.

Article 236
Regulations for hearing witnesses
(Amended paragraph III by Law no. 8812, dated 17.5.2001, article 126)

Witnesses are heard by the court during the judicial debate. In special cases or in the event of illness or because of the occupation of the witness, being these circumstances, which prevent the witness from appearing before the court, the court may rule that the witness is questioned by a member of the adjudicating body out with the premises of the courthouse. In these cases, the questioning of the witness shall be carried out prior to the court session and the evidence gathered shall be recited during the court session. In all cases, the witness shall be questioned in the presence of the parties or their representatives, who shall be e duly notified.

The testimony of the President of the Republic of Albania is taken at the residence where the function of Head of the State is carried out.

When taking the testimony of the Chairperson of the Parliament, the Chairperson of the Council of Ministers, the Chairperson of the Constitutional Court or of the Chairperson of the High Court, they can request to be questioned at the residence where they conduct their duties.

The court shall consistently evaluate the testimonies of witnesses in conjunction with other the evidence admitted during the review of the case.

Article 236/a
Rules of questioning of witnesses for small amount claims
(Added by Law no. 38/2017, article 73; amended partially by Law no. 44/2021, article 8)

Regarding the lawsuits up to twenty times the minimum wage at national level, the court may decide that the witnesses' statements be taken by way of written statements or video-conference, provided outside the court premises. The warning of legal liability for false declaration must be noted in the written statement of a witness. The signature verification shall be certified by a notary or secretary of the court.

Article 237
Taking the oath

The chairman of the court session, after he has been assured of the identity of the witnesses, makes them conscientious of the importance of the mission and of the oath taken before the court and makes known to them that they are obligated to tell the truth on what they know in relation to the case, warns them on responsibility they bear for false testimony. In the meantime, the court secretary reads the oath formula as follows: "Conscientious, I swear that I shall say the truth and only the truth". While standing, the witness answers "I swear" and waits outside the court room under instruction not to communicate with each other.

Article 238
Order of questioning

The order of questioning witnesses is determined by the chairman of the court session by taking into consideration the witnesses of each party. They are questioned one by one in the presence of the parties without the presence of the witnesses that are questioned later.

Article 239

The witness is questioned first by the party who has requested his summons and then by the other party. Each of the parties has the right to ask additional questions to the witness to clarify or to complete the answers given by him. In each case the parties ask questions to the witness by permission and through the court.

The court may ask questions and ask for clarifications any time it considers it necessary for the just solution of the case.

Article 240
Confrontation of witnesses

When between the sayings of the witnesses there are such inconsistencies which create difficulties for the discovery of the truth, the court itself or on request by the parties makes the confrontation of the witnesses previously questioned.

Article 241
Re-questioning of witness

After ending his evidence, the witness may leave with the permission of the court. In case his requestioning may be necessary, then the court orders that he stays in the room without contacting the other witnesses.

Article 242
Renunciation from questioning the witness

The party which has requested the summons of a witness may request that he is not questioned. The request is taken into consideration if the other party agrees and when the court estimates that his questioning shall not be necessary for the clarification of the case.

Article 243

When during the trial, the facts and the claims of the parties result clarified, the court on its own or on their request may renounce from questioning the other witnesses summoned for this purpose.

Article 244
Use of notes by witnesses

The court may permit the witness to use notes or other written data, when they talk on issues having to do with accounts and data which are difficult to remember.

Article 245
Indictment for false evidence

In the event a witness gives false evidence before the court, it decides the indictment to the attorney's office for penal prosecution.

CHAPTER VIII
WRITTEN MATTER

Article 246
Evidentiary power of written matter

Written matter have proving power when they have been drafted in the defined form, have the necessary elements for their value, are not cut into pieces, torn or extinguished, do not have scratches or additions between the lines or other disorders by erasure and may be read.

Article 247

When written matter is damaged in the manner described in the above article, it is presumed to have been done to devaluate its proving value, except when the contrary is proved.

Article 248

The person who presents and uses as a proving means a written matter which bears changes must prove that the changes have been made by the one who has issued the written matter, or by the one to whom it may serve as evidence or by the one to whom the right is assigned or they have been made by someone else on their instruction.

Article 249

When the written matter presented refers to another written matter, it is joined to it except when the written matter that is taken substitutes the referring written matter or contains its full content.

When the written matter taken has a different content from the referring written matter, then the content of the latter is preferred.

Article 250
Written matter in safekeeping or unusable

In cases when evidence by written matter is under protection for legal reasons or impossibility of use and cannot be taken, the court has the right, besides other means, to allow a legalized copy of it to be taken, which has proving power just as the original written matter. When later on this has been lost, the court decides to administer the written matter which proves the identity with the original.

Article 251
Copy of written matter and its original

Copies of written matter have the same proving power with the original when their accuracy is proved by the competent person.

Article 252
Verification of content of written matter at its issuing place

If for unjustified reason it is difficult to acquire the evidence in trial or because of its importance or its nature the danger exists that it may lose or be damaged, the court may order the verification of the written matter by a member of the adjudicating body or its checking by the court of the place where the written matter is, through a delegation of authority or to allow the taking of photocopy or certified photograph.

Article 253
Official acts

Official acts which are drafted by a state employee or a person exercising public activity, within the limits of their competence and in the determined form, constitute a full evidence of the statements that are made in front of them on the facts and events which have happened in their presence or on action performed by them. The opposite is permitted to be proved only when it is claimed that the written matter is forged.

Article 254

Official acts which are issued by state organs and which contain an order, a decision or any other measure taken by them or which indicate the performance of an action by those organs, constitute full evidence on their content. The opposite is permitted to be proved only when it is claimed that the written matter is forged.

Article 255

Copies and shortenings of the acts mentioned in article 253 and 254 certified in conformity with the law have the same proving effect as the originals.

Article 256

Written matter drafted by an employee of a foreign state or by a foreign person who exercises public activity and which in that country is considered as a public entity have the proving effect provided in article 253.

Article 257

Written matter drafted on basis of article 253 on the performance of the juridical action or its certification, as far as the statements of the parties are concerned, constitute a full proof for all.

The provisions mentioned in the above paragraph have effect for anything mentioned in the written matter so far as they have direct relationship to the main subject of the written matter. The ones which do not have direct relationship are considered as a start of evidence by written matter.

Article 258
Simple written matter

The written matter which has been drafted by an official person who has not had the authority or which is not according to the determined form, has proving effect as a simple written matter, if it is signed by the parties.

Article 259

The simple written matter, signed by the person who has issued it, constitutes full evidence that the statement it contains are of the one who has signed it, in case the person, against whom the written matter is presented, admits that it is signed by him.

Article 260

Private written matter are considered also:

- books of traders and professionals who keep them in conformity with the Commercial Code or other provisions;
- the books of advocates, notaries, bailiffs, doctors, pharmacists and other professions in conformity with the provisions in power.

When part from the book or the entire book are presented as evidence and contain also data which are not related to the subject of the trial, those parts of the written matter which are related to the trial may be taken.

Article 261

The private written matter acquires an accurate date against third persons only from the day when it has been certified by the notary or the competent public employee in conformity with the law or when one of those who have signed it dies or has not been in the physical capacity to

write or when its substantial content is repeated or assessed in an official act as well as from the day in which another fact has occurred which proves in the same manner that the written matter is drafted at an earlier date.

Article 262

The private written matter constitutes evidence in favor of the author only if it is presented by the opposing party or if the books mentioned in article 260 are meant.

Article 263

The books mentioned in article 260, paragraph 1 and 2, when they are drafted in the determined form, constitute full evidence for what is written in them, for traders or other persons who are obligated to keep the same books, but the opposite is permitted to be proved when forgery is claimed. Nevertheless, against persons who are not obligated to keep those books, they constitute full evidence for the extension of claims, when their presence is certified in another manner and only within one year from the date of signature, except when the person obligated proves their content with his signature.

Article 264
Obligation for the presentation of documented evidence
(Amended title by Law no. 8812, dated 17.5.2001, article 56)

Any party involved in the trial shall be obligated to present the documents they have lodged to facilitate the trial of the case.

Any party or third person involved in the trial shall be obligated to present their documents as evidence in support of their case with the exception of having legitimate and justifiable reason for not doing so. Legitimate reasons are particularly considered to be cases whereby testimony is not permitted.

Article 265

Execution of the decision ordering the presentation of the written matter is made in conformity with provisions related to the execution on delivering the thing or the performance of the action.

This provision is applied also when the written matter are in a state organ or in the state legal persons, except when the written matter constitutes a state secret.

Article 266
Written matter in foreign language

When the written matter is in a foreign language it is presented together with the translation legalised by the relevant embassy or consulate or by another competent organ.

When the court cannot verify itself the accuracy of the written matter, it designates a translator.

Article 267
Obligation to prove that private written matter is original

When the originality of the private written matter is put in doubt, the one presenting it must prove it, except when the written matter is so changed that it is difficult for the court to assess that it is original.

The person against whom the written matter is presented is obligated to declare immediately if he accepts or not the originality of the signature, otherwise the written matter is considered accepted.

If the originality of the signature is recognised or proved, it is considered that the originality of the content is certified, with the reservation of it being hit for falsity.

Article 268

The private written matter may be proved as original by any proving means.

Article 269

Procedure for comparison of written matters

When the comparison of written matters is made, the person presenting the evidence is obligated to notify to parties the list of written matters with which comparison shall be made or to deposit the originals with the secretariat of the court not later than ten days before the day designated for comparison. The truthfulness of these written matters must not be objected.

When written matters which may be compared are in the possession of the opposing party or the third person, their presentation may be requested. In case of objection, the rules provided in article 265 of this Code may be applied.

The party or the third person to whom the originality of the writing or signature may be denied, may be obligated to write before the court or the before the judge with delegated authority a specific text with which the comparison shall be made. The text is attached to the file. The court estimates freely the denial of the party or of the third person to write or to make efforts to change his writing.

Article 270
Hit for falsity

Any written matter may be hit for falsity. The private written matter may be hit for falsity even when by comparison to others it is certified that they are original.

Article 271
Indictment for penal prosecution

When forging is attribute to a specified person indictment for penal prosecution may be made.

Article 272

When there are serious doubts for forgery against a concrete person and that the written matter presented as forged is estimated as fundamental for the clarification of the case, the court has the right to suspend the trial of the case until the conclusion of the trial of the penal case or to order the presentation of evidence for forgery.

Article 273
Proving falsity of written matter

The one who claims the falsity of a written matter is at the same time obligated to present that written matter which prove the falsity and to indicate the names of witnesses or other proving means, otherwise his claim is unacceptable.

Article 274

When the written matter is presented as forged without indicating the person to whom is attributed the forging, the court orders the acquisition of evidence only when the one who presents the written matter insists that it be presented as evidence and estimates that it has essential importance for the clarification of the case.

Article 275

The secretariat of the court sends immediately the copy of any decision which proclaims the written matter as forged to the attorney's office and to the state organ that has issued the written matter.

The written matter which is proclaimed forged is not given to the party but remains in the archive of the court together with the decision which proclaimed it forged. In these cases, the secretary notes on the written matter that it is forged.

When its copy is given, it contains also the note mentioned in the above paragraph.

Article 276

Persons, who do not participate in the case, when requested a written matter which is with them and do not have the possibility to present it within the time-period determined by the court, are obligated to notify the court for not presenting the written matter in time also indicating the causes. The court, when it does not consider as appropriate the causes indicated as well as when it is not notified that the written matter cannot be sent, has the right to punish the responsible persons in conformity with article 167 of this Code.

Article 277

The party against which a written matter has been presented as evidence may object to its truthfulness in one of these ways:

a) by denying the writing or the signature in the simple written matter;

b) by declaring that it does not know that the writing or signature in the simple written matter belongs to its inheritance-leaver or to the person from which it removes rights;

c) by claiming that the written matter is forged.

Article 278
Photographic, cinema film and other recordings

Photographic films or cinema films, cassettes of any kind and any other recording may constitute evidence for the events and things recorded when the court is convinced on their accuracy and truthfulness. For this purpose, it may call also competent experts.

Article 279

Photographs or photocopies of the written matter have the same effect with the original, in so far as their accuracy is certified by the person who has the authority to issue copies in conformity with the law.

Article 280

After checking the truthfulness of the document, the court pronounces itself whether the document is or is not true by decision which it gives during the trial or by the final decision. When it results that the document is not true, the court dismisses it from the evidence and if it results that the document is forged, it sends it to the attorney for penal prosecution.

By the decision which admits that the document is true, the court punishes the party who claimed its falsity or which denied its writing or signature by a fine of up to 50 000 lek.

CHAPTER IX
ADMISSIONS BY PARTIES

Article 281

Court admission may be casual or urged by questions made in an official manner for such a purpose.

Article 282

The casual court admission may be given orally or in any procedural act personally signed by the party.

Article 283
Procedure for requesting admissions by parties

Questions are made on facts, circumstances and in a manner that the claims of the parties be admitted or rejected.

On the admission of the questions, the court proceeds in the manner and time-periods defined in its intermediate decision.

It is not permitted to ask questions on facts different from those formulated in the court decision except for questions on which the

parties agree and which the court estimates to be beneficial to the court process. The court may ask the necessary clarifications at any occasion for the answers given.

Article 284

The questioned party must reply personally. It cannot use written and in advance prepared notes. Nevertheless, the court may permit the use of notes or other written data when they speak of issues which have to do with accounts and data that are difficult to remember.

Article 285
Non-appearance and refusal to answer of the party

When the questioned party does not appear, or refuses to answer without justified cause, the court by estimating also other evidence may consider as admitted the facts presented in the questions. When non-appearance of the party to answer is with reason, the court decides the postponement of the session or the acquisition of the answers outside the court session.

Article 285/a
Communication with parties for small amount claims
(Added by Law no. 38/2017, article 74; paragraph I partially amended by Law no. 44/2021, article 9)

1. Regarding the lawsuits worth up to twenty times the minimum wage at national level, the court shall order the parties to provide the explanations in writing or via video-conference.

2. Upon the reasoned request of the parties and where the court deems it reasonable, the interrogation of the parties shall be effected by other means of distance communication.

3. Visual and audio aspects of the video-conference hearing shall be transmitted in real time to the location of the hearing where the judicial proceedings are occurring.

4. Visual and audio aspects of the video-conference hearing shall not be recorded. The abovementioned decisions are not subject to any legal remedy.

CHAPTER X
EXAMINATION OF PERSONS, THINGS AND EXAMINATION IN PLACE, EXPERIMENTATION

Article 286

When it is estimated necessary by the court for a person or a thing to be examined directly by it, on its own or on the request of the parties, it decides for their examination to be made in the place with or without experts.

Article 287
Procedure of implementation

The examination of persons, places, movable or immovable things is made by decision of the court, in which are defined the time, place and manner of the examination.

The examination is made by the court itself or by a judge delegated by it or by the judge of the place where the examination shall take place. When it is necessary a technical expert may be present, who acts in conformity with the rules provided in Chapter VI of part two of this Code. The parties are duly notified for the performance of the examination.

Article 288
Safeguarding of personal dignity

In the examination of a person the court must take care in order not to touch his personal dignity. It may not be present itself and may assign this task to an appropriate expert.

Article 289
Making photographic productions and films

The court may decide for photographic reproductions of the objects, documents or things to be made and when necessary and possible also film them or make use of other mechanical means and actions. In order to become sure on the existence of a fact, the court may order that this be verified by proceeding in a defined manner for its reproduction, by acquiring evidence by means of photographs or filming. The court manages itself the experiment or when it considers it appropriate entrusts it to an expert by applying the rules on the appointment and responsibility of the expert provided in this Code.

Article 290
Right of the court to secure things and data necessary for examination

During the examination or the experiment, when it considers it necessary, the court may hear witnesses in order to acquire data and to secure the presentation of the things as well as to take measures to enter into places which must be exposed or examined by the court.

It may order the entry into places which are property or in possession of persons unrelated to the court process, may hear the latter, by taking the necessary measures to avoid damage to their interests.

Article 291
Content of minutes of examination

Minutes are held on the examination in place and on any other examination, which is made outside the court, in who are indicated the parties which have participated, their claims and remarks about the examination and the conclusion of the examination. As the case may be, the minutes are signed by all the judges or by the single judge as well as by the parties and other persons present during the examination.

CHAPTER XI
SECURING OF EVIDENCE (PRELIMINARY EVIDENCE)
(Amended by Law no. 8812, dated 17.5.2001, Article 57)

Article 292
When can securing of proof be requested

When an evidence on which depends the solution of the dispute or which influences its clarification, is in danger of disappearing or its acquisition to become difficult, on the request of the interested party, it may be ordered its acquisition in advance.

Article 293
Submission and content of request

The request for the securing of the evidence is presented to the court which considers the case and in case the lawsuit has not been lodged, in the court of the place where the person to be questioned has his place of abode, or where the thing that must be examined is located.

Article 294

In the request for securing the evidence must be shown: the evidence to be taken, the circumstances for whose proving it serves and the reasons which justify its acquisition in advance.

The copy of the request is communicated to the other party, except when it is not known or when the acquisition of the evidence does not allow delay.

Article 295
Content of the court decision

The decision by which the request for securing the evidence is accepted must indicate the evidence to be acquired and the manner of acquiring the evidence.

A separate appeal may be made against the decision of the court, by which the request to secure the evidence is rejected.

Article 296

The non-appearance of the party which has requested the acquisition of the evidence brings about the dismissal of the request, except when the other party requests it or when the court estimates that it is to the benefit of the trial.

On the manner of the acquisition of the proof as well as for its proving effect the general rules are applied.

Expenditure for the acquisition of the evidence is paid in advance by the person requesting it and at the end of the trial are charged to a party, in conformity with the general rules.

CHAPTER XII
SUSPENSION AND CESSATION OF TRIAL

A. SUSPENSION OF TRIAL

Article 297
(Added letter "dh" by Law no. 38/2017, article 75)

The court decides the suspension of trial when:

a) the case cannot be settled before another penal, civil or administrative case is resolved;

b) is requested by both parties;

c) one of the parties dies or is terminated as a legal person;

ç) one of the parties does not have or has lost later on the legal capacity to act as party and it is considered necessary to appoint to it a legal representative;

d) is expressly provided by law;

dh) one of the parties shall submit the request for resolution of the dispute through mediation and the court shall consider it as reasonable.

During the suspension of the trial cannot be performed procedural actions.

Article 298

(Added paragraph V by Law no. 38/2017, article 76)

In the instances provided for in letters "c" and "ç" of the above article, the suspension of the trial continues until the party appears to participate in the case, or is summoned by the opposing party, the person entering the rights or the legal representative of the party who has lost the capacity to act as a party.

In the instances provided by letters "a", "b" and "d" of the above article, the trial of the case resumes after the obstacles that caused its suspension have disappeared. In these cases, even when the next hearing has not been scheduled, the interested party addresses the court with a request to continue the trial.

The court sets the date of the hearing for the continuation of the trial and orders that this be notified to the parties.

The court may also *ex officio* take measures to remove these obstacles. The trial starts from the procedural action remaining at the time of its suspension.

In the case provided in letter "dh" of Article 297, the adjudication of the case shall be resumed when the mediation agreement is not reached and/or the deadline of 30 days has expired.

B. CESSATION OF TRIAL

Article 299

(Amended by Law no. 38/2017, article 77)

The court decides the cessation of trial when:

a) none of the parties' requests within six months the restart of the trial suspended on their request, when the court has not designated a next session in the decision of the suspension;

b) the plaintiff renounces from the trial of the lawsuit;

c) The court finds that the case does not fall under the court jurisdiction, and when the lawsuit could not be brought or the proceedings could not continue. When these causes are ascertained by higher courts, they shall quash the decision of the lower court and dismiss the proceedings;

ç) the cessation of the trial is expressly provided by law.

Article 300
Juridical effects of cessation of trial

The cessation of trial brings as a consequence the annulment of all procedural actions, including the decisions given during the trial, but in case the plaintiff lodges again the same lawsuit, the evidence gathered in the suspended trial may be taken into consideration in the trial of this lawsuit, if for the renewed acquisition of them there are insurmountable difficulties or obstacles.

The cessation of the trial does not dissolve the lawsuit.

Article 301
Appeal

A separate appeal may be made to the court of appeal against the decision by which is decided the suspension, cessation or the rejection of the restart of trial, except in the cases when it is otherwise provided by law.

CHAPTER XIII
CONCLUSION OF COURT INVESTIGATION AND ISSUANCE OF DECISION

Article 302
Conclusion of court investigation

After all evidence which the court has accepted to acquire are considered, the parties are asked if they have other requests to the benefit of the trial of the case, and if they are not accepted the court concludes the court investigation and invites the parties to present their final claims regarding the case in trial. As a rule, they are presented to the court in writing. On the request of the parties, when it is considered appropriate, the court gives them a time limit of up to 5 days in order to prepare their presentations.

Article 303
Final talks

In the final talks, the first to speak is the plaintiff and the secondary intervenor who has joined him and after him the defendant and the secondary intervenor who has joined him and when in the case participates also the main intervenor, he speaks after the plaintiff and the defendant have spoken. The latter have the right to speak again after the main intervenor.

The attorney speaks first in the cases in which he himself has brought the lawsuit, while in the cases he has participated he speaks after the parties.

Article 304
Request for reopening court investigation
(Amended by Law no. 38/2017, article 78)

No other evidence may be taken after the judicial investigation is concluded. The parties may require the opening of judicial investigations for obtaining new evidence only under the conditions of Articles 151 and 186 of this Code. The court decides on this request, in conformity with the estimation of the circumstances of the case.

Article 305
Withdrawal of the court in consultation chamber

After the parties have presented their conclusions and claims, the court announces its withdrawal in consultation chamber, in order to give the final decision.

Article 306
Issuance of decision

In consultation chamber, when the case is discussed and the decision is drafted, will stay only the judges that constitute the adjudicating panel. It is not permitted that during discussion of the case to enter or stay the secretary of the session, experts or other persons.

Article 307

The adjudicating body under the direction of the chairman of the session puts forward for discussion and decides in turn for all the issues which have been considered during the trial.

The first to vote is the youngest judge and the last is the chairman of the session. None of the judges may abstain from decision. The opinion of the judge in minority, presented in writing, is attached to the decision.

If in relation to an issue several solutions are proposed and no majority is formed with the first voting, the chairman puts forward for voting two solutions in order to exclude one and so on until the solutions remain only two and the final voting is made on them.

Article 308
(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 58, Amended paragraph II by Law no. 38/2017, article 79)

The decision must be signed by all members of the adjudicating body that have participated in the issue of the decision. A judge, whose opinion has been in the minority shall inscribe the word "against" on the decision and then sign it.

The court can only pronounce the ordering provisions, submitting it justified to the secretary not later than twenty days, or postpone the announcement of a reasoned decision, up to twenty days. The reasoning of the decision shall be made by the chairperson of the hearing, except when he/she goes against.

Article 309

The decision is based only on data which are in the acts and which have been considered in court session.

The court estimates the evidence acquired during the trial of the case, in conformity with its inner conviction, formed by the consideration of

all the circumstances of the case in their entirety.

Article 310
Content of the court decision
(Added point 1/1 by Law no. 122/2013, dated 18.4.2013; amended by Law no. 38/2017, Article 80; paragraph II, point 3 partially amended by Law no. 44/2021, Article 10)

The decision must contain the introduction, the descriptive-justifying part and the ordering part.

I. In the introduction of the decision must be mentioned:

1. the court which has tried the case.
2. the adjudicating body and the secretary.
3. the time and place of the issuance of the decision.
4. the parties, indicating their identity and their position as plaintiff, defendant, intervenors as well as their representatives.
5. the name of the attorney, if he has participated.
6. the subject of the lawsuit.
7. the final requests of the parties.
8. the opinion of the attorney if he has participated.

II. In the descriptive-justifying part must be mentioned:

1. the circumstances of the case, as they have been assessed during the trial, and the conclusions drawn by the court.
2. the evidence and reasons on which the decisions are based.
3. the legal provisions on which the decision is based. The court decision for claims worth up to twenty times the minimum wage at national level should contain an introduction and ordering part, under paragraph 1 of this Article. If the parties, within three days of notification of this decision, notify the court in writing that they will appeal the decision, the court shall reason the decision and notify the parties.

III. In the ordering part, among others must be mentioned:

1. What has court decided.

1/1. if the court imposes obligations for the parties, their specific content and that the decision is enforceable by judicial bailiffs.

2. who is charged with the court expenses.

3. the right of appeal and the time limit for its presentation.

Article 310/1

Repealed by Law no. 38/2017, article 81)

Article 311

When the decision contains the obligation for the delivering of a thing in kind or the obligation for the performance of a certain action, the court may indicate in the decision the time limit for the execution of the decision.

The court may designate a time limit for the execution of the obligation in money or may divide it in instalments, on the request of the interested party, by taking into consideration the state of possessions of the parties and other circumstances of the case.

Article 312
Correction of mistakes

After the announcement of the decision the court cannot annul or change it.

At the request of the parties or on its own it may correct at any time only errors made in writing or in calculation, or any obvious inaccuracy of the decision.

After summoning the parties, in session, the court considers the request in conformity with the rules of this Code, issues decision, which is attached to the corrected decision.

A separate appeal may be made to the Court of Appeal against the issued decision in the cases provided in the second paragraph of this article.

Article 313
Completion of decision

Each of the parties may request the completion of the decision, within thirty days from the announcement of the decision, in case the court is not pronounced on all the requests on which the party has presented evidence.

After summoning the parties, the court considers the request by the same adjudicating body and issues such complementary decision.

Appeal may be made against such decision in conformity with the general rules.

Article 314
Clarification and interpretation of decision

The court has the right to give clarifications or to make the interpretation of the decision it has issued when it is obscure and the parties request it.

The request for the clarification and the interpretation of the decision may be presented at any time until the decision has not been executed.

Separate appeal may be made against the above decisions in conformity with the general rules.

Article 315
Intermediate decisions

Decisions issued during the trial and which are not final, may be changed or revoked by the court which has issued them, except when in this Code it is provided that a separate appeal may be made against them.

Article 316
Notification of decision
(Amended by Law no. 122/2013, article 27)

Final, non-final and interim decision of the court which may be appealed against, are notified to the parties or other participants in the process, within three days from the date of the decision or, in case the reasoned decision is issued later, within three days after the issuing of the reasoned decision.

Notification is done according to the rules envisioned in chapter IV, title VI of part.

The United Chambers of the Supreme Court, in their unifying decision No. 2, dated 27.03.2012, have addressed for legal unification the following matter:

1. When a case has been adjudicated by the court of first instance or by the appellate court in the absence of one of the parties, when does the time limit for appeal commence - on the day the decision is notified, or on the day following such notification?

The United Chambers of the Supreme Court held that:

> The time limit for filing an appeal is regulated by Article 444 of the Code of Civil Procedure, whereas Article 148 of the Code of Civil Procedure provides general rules on the calculation of time limits. According to these provisions, when a time limit is expressed in days or hours, the day and hour of the event that triggers the time limit or from which it begins to run are excluded from the calculation.
>
> The United Chambers of the Supreme Court conclude that when a case has been adjudicated by the court of first instance or the appellate court in the absence of one of the parties, the time limit for filing an appeal or recourse by that party is to be calculated starting from the day following the date of receipt of the notification of the decision, in accordance with the rules provided in Articles 316 and 148 of the Code of Civil Procedure.

CHAPTER XIV
DECISIONS OF TEMPORARY EXECUTION

Article 317
Cases of issuing decisions of temporary execution

`The decision of the court may be issued for temporary execution when it has been decided:

a) the obligation for sustenance;

b) on the retribution for work;

c) on the return of possession of conjugal place of abode.

The decision may be issued for temporary execution also when due to the delay of execution the plaintiff may suffer important damage, which cannot be remedied or when the execution of the decision would become impossible or would be made exceedingly difficult. In this case the court may demand that the plaintiff give a guarantee.

Article 318
Appeal

A separate appeal may be made against the decision by which is accepted or rejected the request for temporary execution.

Article 319
Consequences of cancellation of decision
(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 126)

In case the decision is cancelled by the court of appeal or the High Court the temporary execution shall be suspended.

In the event that after the cancellation of the first decision the lawsuit is dismissed and the decision becomes irrevocable, the first winner shall be obligated to return to the other party anything it has taken by means of the temporary execution of the first decision.

TITLE III
SPECIAL TRIALS

CHAPTER I
GENERAL PROVISIONS

Article 320
(Repealed letter 'a' by Law no. 49/2012; amended letter 'b' by Law no. 114/2016, article 1)

Special sections are created in the composition of district courts for the trial of:

a) repealed;

b) commercial disputes and of insolvency proceedings;

c) disputes related to minors and family.

Article 321

The President of the Republic, on proposal by the Minister of Justice, designates the courts in which these sections shall be created, as well as

the zones where they shall extend their competence, on the basis of the joinder of territorial competence of one or several courts of first instance.

The Minister of Justice determines the number of judges for each section and takes care for their training according to their relevant section.

Article 322

(Amended by Law no. 8812, dated 17.5.2001, article 126)

When it is in the interests of a fair division of tasks, the chief judge of the court of first instance or his deputy, during specific periods of time, may assign judges appointed to sections also with the adjudication of cases of another nature, which are not of competence of the sections established in this court.

Article 323

(Added last paragraph by Law no. 114/2016, article 2)

The provisions of the first and the second part of this Code are applicable for all special trials, except when it is otherwise provided in this title and in title IV of this part.

The provisions of this Code are applicable in insolvency cases, for as much as not differently provided for in the law on bankruptcy.

CHAPTER II
ADJUDICATION OF ADMINISTRATIVE DISPUTES

Article 324
Material competence

(Repealed by Law no. 49/2012)

Article 325

(Repealed by Law no. 49/2012)

Article 326

(Repealed by Law no. 49/2012)

Article 327
Territorial competence

(Repealed by Law no. 49/2012)

Article 328
Time limit
(Repealed by Law no. 49/2012)

Article 329
Suspension of execution of administrative act
(Repealed by Law no. 49/2012)

Article 330
Joinder of lawsuits
(Repealed by Law no. 49/2012)

Article 331
Decision of the court
(Repealed by Law no. 49/2012)

Article 332
(Repealed by Law no. 49/2012)

Article 333
Appeal
(Repealed by Law no. 49/2012)

CHAPTER III
TRIAL OF COMMERCIAL DISPUTES

Article 334
Competence
(Amended by Law no. 8812, dated 17.5.2001, article 126; Law no. 38/2017, article 82)

In the competence of the sections for adjudicating commercial disputes at the courts of first instance, are:

a) Contractual disputes between commercial companies and between them and natural persons registered as traders, or between these natural persons registered as traders, if it is a commercial activity for both parties. Transactions made by natural persons registered as a trader are presumed to be part of the commercial activity, unless it is proven otherwise;

b) Disputes between partners of commercial companies, between the company and its partners and also between the company or its partners and its management bodies, when the disputes arise from their position in the company, and the claims of the creditors raised under the legislation in force on traders and commercial companies;

c) Disputes related to a contract of alienation of rights of members of a commercial company;

ç) Disputes on the right to a trade name;

d) Violation of regulations on protection of competition;

dh) Bankruptcy proceedings;

e) Disputes resulting from the dissolutions of companies;

ë) Claims on a bill of exchange, cheque and other papers of this nature provided for by law.

Article 335

(Amended by Law no. 8812, dated 17.5.2001, article 126)

A lawsuit filed in accordance with Article 334 of this Code shall be reviewed by the relevant section of the First Instance Court in the jurisdiction of where the indicted commercial legal or natural person has its main offices, except when both parties under contract have designated another court retaining the same authority.

Upon filing of a lawsuit to the First Instance Court of the district where the commercial natural or legal person has its main office, the lawsuit shall be sent to the court where the section for the trial of commercial disputes has been created no later than after three days.

Article 336
Appeal

Appeals against the decisions issued by the relevant section of the district court are considered by the court of appeal in conformity with the general rules by court councils consisting of judges specialized in this field.

TRIALS ON INVALIDATION OF A CHEQUE, BILL OF EXCHANGE AND PAPERS OF THIS KIND

Article 337

The person, who enjoys the right to a value paper such as cheque, bill of exchange, promissory note and other value papers of this kind, may request their invalidation when they are lost, stolen or damaged in the cases provided by law.

Article 338
Territorial competence

(Amended paragraph III by Law no. 8812, dated 17.5.2001, article 126)

The claim shall be reviewed by the section of the court designated to the trial of commercial disputes where securities must be paid or where the defendant has its place of abode.

The plaintiff is entitled to the choice.

Upon submission of the claim to the First Instance Court of the district where securities must be paid, the claim shall be sent no later than three days to the court where the section for the trial of commercial disputes is located.

Article 339

When there are many defendants and the plaintiff does not prefer to bring the lawsuit in the place of payment of the value paper, the lawsuit is brought in the place of abode of any of the defendants.

Article 340
Content of request

In the request for the invalidation of the cheques, bill of exchange and other papers of this kind, the interested person must indicate among others:

a) the kind of paper and the necessary elements for its identification, attaching a copy of it certified by the notary;

b) the circumstances in which its loss, theft or damaging has occurred as well as the arguments which certify his right on this value paper.

Article 341

In the trial of this lawsuit cannot be brought a countersuit and it cannot be joined to other lawsuits which may be related to it.

Article 342
Procedure of trial

When the court sees that the requirements of article 340 of this Code are fulfilled, it gives an opinion in council, which among others must contain:

a) the identity of the seeker;

b) the kind of value paper mentioned in article 337 of this Code and the necessary elements for its identification;

c) the order addressed to the payer not pay the value paper to the holder;

ç) a notice addressed to the possible holder of the value paper, in order to present his rights within 30 days from the issuing of the decision, indicating that in the opposite case it shall be invalidated.

The decision is announced in the court, in the place designated for this purpose and is published in the Official Gazette and at least in one national newspaper. The copy of this decision is send also to the payer.

Article 343

The actual holder of the value paper mentioned above must notify, within the time limit designated in the above article, to the court his objection to its invalidation, to determine the necessary evidence to certify that he has won it by right and to deliver the value paper to the court or to a bank in conformity with the relevant provisions of the Civil Code on bank deposits and security boxes until the dispute is resolved.

In the case provided in the first paragraph of this article, the court suspends the trial and notifies the person who has requested the invalidation of the value paper in order to bring a lawsuit on the recognition of his right to the above paper within the time limit of one month. In case such a lawsuit is not brought within this time limit, the court decides the cessation of the trial Code.

Article 344

When the holder of the paper has not performed the actions provided

in the first paragraph of article 343 of this Code, the court decides the dissolution of all rights on the lost, stolen or damaged value paper and recognizes to the person who has requested its invalidation the right on its payment or the equipment with a new value paper.

Article 345

In the trial of the case in conformity with paragraph II and II of article 343 and article 344 of this Code, the court notifies the natural or legal person who has requested the invalidation of the value paper as well as the one who has issued the value paper, but their presentation does not stop the consideration of the case.

Article 346

When the court dismisses the request on the invalidation of the value paper, it revokes its by notifying the payer.

Against the above decision as well as against decisions in conformity with articles 343 and 344 of this Code may be appealed in conformity with the general rules.

Article 347
Exercise of lawsuit for unjust enrichment

The holder of the invalidated value paper, who has not been able to declare, for any cause

Code may sue the person to whom has been recognized the right of payment of the value paper or may request the equipment with another identical paper in conformity with article 655 of the Civil Code.

Article 348
Trials related to patents and other rights arising from industrial property
(Amended by Law no. 8812, dated 17.5.2001, article 126)

Disputes arising from patents, trade and service brands, commercial designs, models and any other rights arising from industrial propriety, shall be tried by the section of commercial disputes in the First Instance Court of the district of Tirana, in accordance with the regulations provided in this Code.

Article 349
Material competence
(Amended by Law no. 8812, dated 17.5.2001, article 126)

The sections for family disputes in the First Instance Courts have authority over:

a) disputes on the dissolution of marriage by divorce, on the invalidity and annulment of marriage;

b) awarding and removing the custody of minors, issuing temporary orders for the upbringing and education of children until the dissolution of the marriage and the alteration of previous judicial decisions in light of arising circumstances;

c) the approval of adoption;

ç) disputes relating to awarding maintenance;

d) the division of marital property and of marital quarters;

dh) claims on the suspension and restoration of parental rights.

A. PROCEDURE FOR ESTABLISHING CUSTODY

Article 350
Territorial competence
(Amended by Law no. 8812, dated 17.5.2001, article 126)

To award or remove custody and to suspend or restore parental rights shall be the authority of the relevant section of the First Instance Court of the district where the minor resides.

Article 351
Right for presentation of request to the court

The request to place under guardianship is presented to the court by the next of kin of the child and by anyone who receives notice on the children remaining without parents, on the birth of a child with unknown parents and on any other circumstance for which the law demands the placement of guardianship.

When on the opening of a will, the notary, who makes its publication, takes knowledge on the appointment of guardian, he must notify the court not later than 10 days from receiving knowledge and the court

proceeds and decides within not later than 15 days.

Article 352

The minor who has accomplished 16 years of age may exercise himself the right to address the court on the placement of guardianship.

Article 353
Designation of guardianship

The court appoints a single guardian even when there are several minor brothers and sisters. When there is conflict between the interests of the minors, it may appoint also another guardian or several guardians.

Article 354

The court appoints as guardian the person designated in the will and in his absence one of the next of kin in direct line and after that in indirect line.

If the court estimates that the solution has not been made in the interest of the child it acts on its own on the appointment of the guardian.

Article 355
Special guardian

The court appoints a special guardian when this is required by the interests of the minor. The special guardianship is removed when the causes for which it was placed cease.

Article 356
Questioning of minor by the court

Before the court proceeds for appointing a guardian, it must ask also the minor when he has accomplished 10 years of age.

Guardianship terminates when the minor accomplishes 18 years of age or when the minor gets married before this age.

Article 357
Replacement of guardian

On the request of the persons mentioned in article 351 the court removes the guardian at any time and replaces him with another, when it observes that he has abused the rights belonging as guardian, when he has been

careless in performing his duty or in other manners has put in danger the interests of the minor as well as when the guardian himself requests his release for reasonable causes.

The court may remove the guardian only after it has duly heard or notified him.

B. TRIALS RELATED TO MARRIAGE

Article 358
Lawsuit for divorce
(Repealed by Law no. 9062, dated 8.5.2003)

Article 359
Joint lawsuit of spouses
(Repealed by Law no. 9062, dated 8.5.2003)

Article 360
(Repealed by Law no. 9062, dated 8.5.2003)

Article 361
Efforts of the court for conciliation
(Repealed by Law no. 9062, dated 8.5.2003)

Article 362
Delay in announcement of final decision
(Repealed by Law no. 9062, dated 8.5.2003)

Article 363
Suspension of trial on request by pregnant woman
(Repealed by Law no. 9062, dated 8.5.2003)

Article 364
Joinder of other requests
(Repealed by Law no. 9062, dated 8.5.2003)

Article 365
Taking temporary measures
(Repealed by Law no. 9062, dated 8.5.2003)

Article 366
Court expenses
(Repealed by Law no. 9062, dated 8.5.2003)

Article 367
Sending of decision to office of civil register
(Repealed by Law no. 9062, dated 8.5.2003)

Article 368
Lawsuit on invalidity and nullification of marriage
(Repealed by Law no. 9062, dated 8.5.2003)

CHAPTER V
COURT DIVISION

Article 369

In the trial of a lawsuit for division of inheritance or of things in joint ownership, the rules provided in articles 207 and 227 of the Civil Code are respected.

Article 370
Stages of trial

The trial for the division of things in joint ownership and in inheritance in its first stage aims to investigate and determine the right of joint ownership of the parties, their belonging parts as well the things to be divided. After the court has acquired the necessary evidence, by an intermediate decision, it permits the division and determines the circle of joint owners, the things to be divided and the belonging parts of each of them.

Separate appeal is permitted against such decision, the presentation of which suspends the further continuation of trial.

Article 371

When the parties declare that they do not have any complaint against the intermediate decision mentioned in article 370 of this Code, a note is made in the court minutes, which is signed also by the parties or their representatives. In such an event as well as in the event when the intermediate decision which has permitted the division has become

irrevocable, the court continues the trial in the second stage by considering the requests that the joint owners may have on the accounts which they must give between them and which result from the relationship of joint ownership.

Article 372
Assessment of wealth and formation of parts

The court makes the appreciation of the things to be divided, after it has previously received the opinion of the experts, and when the things may be divided in kind as many parts are formed as there are co-sharers. In each of these parts must be included, to the degree possible, a quantity of the things or the credits of the same nature equal in value to the belonging part. Inequality in kind of the things between the shares is compensated in money. The court decides also on the financial relationship of the parties because of the joint ownership.

Article 373 Decision of the court
(Added paragraph II by Law no. 8812, dated 17.5.2001, article 60)

When the thing is divided in equal parts or of equal value, the court shall draft a division plan which is submitted to the secretariat in no less than ten days prior to the subsequent court session. The parties shall be permitted to make observations on the plan submitted up until no later than five days prior to the subsequent court session.

The court shall determine ownership for each part of each joint owner in its final decision. Should the value of the division of the immovable property be equal, parties can request that the property be allocated to each owner by means of drawing lots. Should a co-sharer request ownership of an indicated part, the court may accept such request if the court deems it as appropriate in view of the profession or of the nature of the items included in the indicated part. The division of immovable property is carried out in accordance with city planning regulations.

Article 374
Sale of thing at auction

When in the final decision it has been ordered that a thing must be sold by auction because it cannot be divided in kind, the decision, after it has become final, is executed by the bailiff in conformity with the rules of enforced execution.

CHAPTER VI
DECLARATION OF DISAPPEARANCE OR DEATH OF A PERSON

Article 375
The Request
(Amended by Law no. 122/2013, article 28)

A request to declare a person as disappeared or dead may be filed by any interested person, by the notary who has drafted a will by notary act or who has been keeping the oleograph will or the special will, or by the prosecutor in the court of the area where the person, who is requested to be declared as such, last abode.

Article 376
Content of request

In the request for the declaration of a person disappeared or dead, besides the circumstances through which his disappearance or death becomes credible, is indicated also the guardian or his legal representative if there are such.

In the request for the declaration of a person dead must be indicated also the other persons who are or may be his heirs as well as all other persons to whom it is known that they gain or lose rights from this fact.

Article 377
Publication of statement of claim

The court, within ten days from the filing of the request for adjudication, sends a copy of it to the municipality or the commune where the person requested to be declared disappeared or dead has had his last place of abode in order to announce it in a visible place. The abovementioned request is also published in the Official Gazette as well as at least in one local newspaper.

The consideration of the case by the court cannot be made before six months have passed from the announcement of the request or its publication in the Official Gazette.

Article 378
Procedure of trial

In the consideration of the request to declare a person disappeared or dead, the court asks his relatives, takes data on this person from the municipality or the commune where he has had his last place of abode as

well as from any other source which may give news on that person.

Article 379

In the consideration of the request for the change or revocation of the decision which has declared a person dead must be called the persons who had requested the statement of death and the persons who have gained rights from the declaration of death.

Article 380
Publication of decision
(Amended third paragraph by Law no. 122/2013, article 29)

The court decides on the declaration of a person disappeared or dead after having heard also the persons mentioned in article 375 and 376 of this Code as well as the attorney.

The court orders the publication of the summary of the decision in the Official Gazette or in at least one local newspaper designated by the court or in another manner which it shall consider beneficial.

The Court may take measures secure the inheritance property. It authorizes the Chamber of Notaries, at the local level, which covers the local government unit where the person declared disappeared or dead last resided, or the notary who has drafted the will or kept the oleograph or special will, to make the inventory of the heir's property. The Chamber of Notaries, at the local level, appoints a notary to make the inventory of the heir's property.

The notary, in turn, must appoint a person as the guardian of the inheritance property until when the inheritance procedure is initiated.

Article 381
Registration of decision in office of civil register

The decision of the court, which declares a person disappeared or dead, is sent for registration to the office of the civil register in which he has been registered, after being assured that its publication has been made in conformity with the above provision.

CHAPTER VII
REMOVAL OR LIMITATION OF CAPACITY TO ACT

Article 382
Who makes the request

The removal or limitation of the capacity to act is made on the request of the spouse, next of kin, prosecutor as well as other persons who have legitimate interest on this fact.

The request is presented to the court of the place where the person to whom is requested to be removed or limited the capacity to act has his place of abode.

Article 383
Procedure of trial

The request on the removal or limitation of the capacity to act is notified to the prosecutor. The request must contain the fact on which it is based as well as the necessary evidence. The court decides in relation to the request after having questioned the person for whom is requested the removal or limitation of the capacity to act, persons from his next of kin, the doctor who has cured him or after having received the opinion of other expert doctors as well as other evidence it shall estimate as necessary.

The questioning of the person for whom is requested the removal or limitation of the capacity to act is made at the institution where he is accommodated for medical treatment or in his place of abode by a delegated judge, when it is not possible for the person to appear himself in court.

Article 384
Temporary guardian
(Repealed by Law no. 9062, dated 8.5.2003)

Article 385
Appeal

Appeal may be made against the decision for the removal or limitation of the capacity to act by the person himself, his temporary guardian, the person who has made the request as well as all other persons who in conformity with article 382 of this Code have the right to request the removal or the limitation of the capacity to act, independently from their

participation or not in the trial of this case. In this case the court allows them to get acquainted with the content of the court file.

Article 386
Reference provision

The provisions provided in this chapter are applied also for the restitution of the capacity to act.

Article 387
Access of interested persons to the decision of the court

After the decision, by which the capacity to act is removed or limited, becomes irrevocable, a summary of it is sent to all courts in order to be registered in a special form, with which may get acquainted anyone who is interested.

The court sends a summary of this decision also to the National Chamber of Notaries, which notifies it to the chambers of notaries in districts.

CHAPTER VIII
COURT CERTIFICATION OF THE FACTS

Article 388
When a request can be made
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 126)

Should the formation, alteration or termination of the personal or property rights of a person be dependent on one fact and the document that certifies it has either disappeared, is lost and cannot be remade or cannot be obtained in any other way, the interested person shall be entitled to request that the fact is certified by a decision of the First Instance Court. The request for the certification of events shall be filed to the First Instance Court in the jurisdiction where the claimant resides. Should certification of an event for a static object be requested, the request shall be filed to the First Instance Court in the jurisdiction where the item is located.

The same shall apply in the event of a request for the correction of mistakes in documentation as detailed in the first paragraph of this article.

Article 389
Content of request

In the request for the certification of facts must be shown:

a) the purpose for which the seeker presents the request for the certification of the specified fact;

b) the causes due to which the written matter cannot be obtained or for which it cannot be made again;

c) the evidence by which shall be proved both the cause due to which it is not possible to obtain or make again the written matter as well as the fact which is requested to be certified.

Article 390
Procedure of trial

The request for the certification of court facts is considered in court session in the presence of the seeker and of the natural or legal persons who have an interest in the case. When the case presents public interest and the court considers it reasonable, also the attorney may be called.

Article 391
Decision of the court

In the decision of the court must be shown the fact certified by it and the evidence on basis of which the fact has been certified.

In conformity with the general rules, appeal may be made against the decision by which the request is accepted or rejected by the seeker as well as by the natural or legal persons who have been called to participate in the trial of the case.

The decision does not have proving effect against natural or legal persons who have not been called if they object to the fact certified in the decision.

Article 392
Effects of the court decision

When during the consideration of the request a conflict arises between the seeker and another interested person on the civil right which is related to the certification of the fact, the court decides the cessation of the consideration of the case. In this case the parties may address the court through a lawsuit in conformity with the general rules.

CHAPTER IX
RECOGNITION OF DECISION OF FOREIGN COUNTRIES

Article 393
Conditions for execution of decisions issued by foreign courts

The decisions of courts of foreign countries are recognized and applied in the Republic of Albania in the conditions provided in this Code and the separate laws.

When for this purpose there is a special agreement between the Republic of Albania and the foreign state, the provisions of the agreement apply.

The United Chambers of the Supreme Court, in their unifying decision No. 6, dated 01.06.2011, have addressed for legal unification the following matters:

1. What constitutes the proper jurisdictional formation for adjudicating a request for recognition and enforcement of a foreign court decision pursuant to Articles 393–397 of the Code of Civil Procedure?
2. In appellate proceedings, must the case be heard in the presence of both parties (i.e., the adjudicating authority and the party seeking enforcement), or only with the participation of the adjudicator who is requesting the enforcement of the foreign decision?
3. If, in these proceedings, the same procedural rules are applied as those governing the admission of a standard claim - such as the requirement to pay a 1% court fee on the value of the claim - how should such procedural matters be handled?

The United Chambers of the Supreme Court held that:

> 22. Pursuant to Article 396 of the Code of Civil Procedure, the creditor seeking recognition and enforcement of a foreign court decision is required to submit to the court, a copy of the foreign decision to be enforced, duly translated into Albanian and notarized; confirmation from the issuing court that the decision is final, likewise accompanied by a notarized Albanian translation.
>
> Both documents must be authenticated by the Ministry of Foreign Affairs of the Republic of Albania. If the request is submitted by a legal representative of the interested party, a power of attorney, also translated and notarized, must be filed with the appellate court.

31.1. The appellate court shall verify and, where necessary, undertake all actions prescribed by civil procedural law, the New York Convention, any applicable special legislation, or other relevant international agreements in force, in order to ensure that all debtor parties - as identified in the foreign court decision or foreign arbitral award - are properly summoned before the appellate court in connection with the enforcement proceedings.

31.2. In reviewing the request for recognition and enforcement of a decision of a foreign court or foreign arbitral tribunal, the appellate court shall apply the procedural rules of first-instance adjudication.

31.4. If the request for enforcement of the foreign court decision or arbitral award contains deficiencies or formal irregularities, the appellate court shall grant the applicant a reasonable period to supplement or correct the defects. If the applicant fails to cure the deficiencies within the prescribed time limit, the appellate court shall return the request and accompanying documents without further action.

31.5. If the request for enforcement of the foreign court decision or arbitral award meets the formal and procedural requirements, the appellate court shall schedule a hearing limited to the examination of whether any legal prohibitions or obstacles exist as defined in:

- Article 394 of the Code of Civil Procedure;
- Article 5 of the New York Convention; or
- Any other applicable special provision provided by domestic law or international agreement.

At the conclusion of the hearing, the appellate court shall issue a decision either accepting or rejecting the request for recognition and enforcement of the foreign court decision or arbitral award.

Article 394
Legal obstacles for the execution of decisions issued by foreign courts

The decision of a court of a foreign state does not become effective in Albania when:

a) in conformity with the provisions in effect in the Republic of Albania, the dispute cannot be within the competence of the court which has issued the decision;

b) the statement of claim and the writ of summons to court has not been notified duly and in time to the absent defendant in order to give him the possibility to defend;

c) between the same parties, on the same subject and on the same cause has been issued another, different decision by the Albanian court;

ç) a lawsuit, which has been filed before the decision of the court of the foreign state has become irrevocable, is being considered by an Albanian court;

d) the decision of the court of the foreign state has become final in violation of its legislation; dh) it does not comply with the basic principles of the Albanian legislation.

Article 395
Consideration of request

The request to make effective a decision of a foreign court is presented to the court of appeal.

The request may be presented also through diplomatic ways when it is allowed by international agreements based on reciprocity.

In such events, if the interested party has not appointed a representative, the Chairman of the court of appeal appoints an advocate to present the request.

Article 396

To the request to make effective a decision of a foreign court must be attached:

a) copy of the decision which must be applied and its translation in the Albanian language legalized by a notary;

b) certificate by the court issuing the decision that it has become irrevocable as well as its translation and legalization by a notary. Both the copy of the decision and the certificate that it has become irrevocable must be certified by the Ministry of Foreign Affairs of the Republic of Albania;

c) the power of attorney in case the request is presented by the

representative of the interested person, translated and legalized by a notary.

Article 397

The court of appeal does not consider the case in foundation, but only checks whether the decision presented does not contain provisions which conflict with article 394.

The court of appeal issues a decision on the request presented.

Article 398
Application of decision of foreign court

The decision of the court of a foreign state is applied in the Republic of Albania only on the basis of the decision of the court of appeal which gives effects to that decision and is executed in conformity with the relevant provisions of this Code.

Article 399
Award of arbitration court

The provisions of this chapter are applied also on the recognition of the final award of an arbitration of a foreign state.

CHAPTER X
JUDGEMENT ON REQUESTS FOR ASCERTAINING VIOLATIONS OF REASONABLE TIME, EXPEDITION OF PROCEEDINGS AND COMPENSATION FOR DAMAGE

(Added the whole chapter X by Law no. 38/2017, article 83)

Article 399/1
Scope

1. In the competence of courts, according to the instances of adjudication specified in this Chapter, shall be included the adjudication of requests for due compensation to the person, who has suffered a pecuniary or non-pecuniary damage due to the unreasonable length of a case, as per the definition of Article 6/1 of the European Convention "On Protection of Human Rights and Fundamental Freedoms".

2. Provisions of this chapter define the evaluation of reasonable duration

of a process, as well as the due compensation, when unreasonable delays have been determined in investigation procedures, trial of cases, as well as in the procedures of execution of decisions.

Article 399/2
Reasonable timing

1. Reasonable timing for completion of an investigation, trial or execution of a decision with final force and effect, for the purposes specified in Article 399/1 shall be considered:

a) The completion of a trial, in administrative adjudication at first instance and on appeal, within one year of its starting in each instance;

b) The completion of a process in a civil trial at first instance within two years, in a civil trial on appeal within two years; and in a civil trial at the High Court within two years;

c) The one-year time limit of the procedure for the execution of a civil or administrative decision, except periodic obligations or obligations defined on time, shall start from the date of submission of the request for putting it into execution;

ç) The maximum time limit of duration of investigations under the Criminal Procedure Code, for investigations of criminal offenses;

d) In criminal trials at first instance, the time limit for adjudication of crimes shall be 2 years and for misdemeanours 1 year, the time limit of completion of a trial on appeal shall be 1 year for crimes and 6 months for misdemeanours, and the time limit of completion of a trial at the High Court shall be 1 years for crimes and 6 months for misdemeanors.

2. The parties may require the ascertainment of undue prolongation of proceedings under Article 399/6, paragraph 1, even without the expiry of the above time limits, taking into account the complexity of the case, the subject matter of dispute, proceedings or trial, the behaviour of the body conducting proceedings, and any other person connected with the case, when claiming procrastination in investigations, trial or execution of the decision.

3. The time limit, when a case has been suspended for legitimate reasons, has been delayed due to the requirements of the requesting party in accordance with this chapter or when circumstances appear for objective

impossibility of processing, shall not be counted to the length of the trial or proceedings.".

Article 399/3
Just satisfaction

1. Just satisfaction for violation of reasonable time limits shall be deemed the recognition of violation, any measures taken to expedite the proceedings of investigation, trial of the case and execution of the decision, and/or compensation of the damage, according to the provisions of this Chapter.

2. Anyone who is involved in a legal process, as a party in the process, has the right to just satisfaction as determined by Article 399/3 of this Code.

Article 399/4
Competence for examining a request or statement of claim

1. The request to ascertain a violation and expedite proceedings shall be addressed to the competent court, under Article 399/6, paragraph 1 of this Chapter. The court shall, as appropriate, receive information during the trial from the body that is conducting the proceedings.

2. The statement of claim, under Article 399/6, paragraph 3, shall be addressed to the civil court of first instance that is competent under the general rules, only after the procedure for ascertaining the violation and expediting proceedings has been exhausted under paragraph 1 of this article, and the decision of the court has not been executed by the body that has committed the violation under paragraph 1 of this article. The Ministry of Justice and Ministry of Finance, or the responsible private bailiff service shall be summoned in the trial as defendant.

Article 399/5
Submitting a request to ascertain violation of reasonable time and expedite proceedings

1. The request shall be filed with the court that is in delay, or with the court competent for execution. The request must contain:

a) Litigants, the body alleged to have committed the violation, the subject matter of dispute or execution;

b) A summary presentation of facts of the case;

c) Reasons for which the ascertainment of violation of reasonable time and expedition of proceedings has been required;

ç) Measures required to be taken.

2. Together with the request shall also be submitted:

a) Acts that prove the exceeding of reasonable time;

b) Intermediate minutes and decisions;

c) Acts of enforcement practice, as appropriate;

ç) Power of attorney, whether the request has been made by an advocate or a representative of the complainant.

3. Filing and examination of the request under this article, does not suspend the judgment on the merits of the case, or enforcement procedures.

Article 399/6
Competent court to examine a request or statement of claim

1. The request to ascertain the violation and to expedite proceedings shall be addressed to the competent court according to the type of criminal, civil or administrative dispute, as follows:

a) Where the case, on which the violation is alleged, is being tried at a court of first instance, the request shall be examined by the Court of Appeal, under the jurisdiction of which is the court of first instance;

b) Where the case, on which it is alleged to have occurred a violation, is being tried at a court of appeal, the request shall be examined by the respective Chamber of the High Court;

c) Where the case, on which it is alleged to have occurred a violation, is being tried at the High Court, the request shall be examined by another Chamber of the High Court;

ç) Where the case, on which it is alleged to have occurred a violation, is in the execution procedure, the request shall be adjudicated by the Judicial District Court, competent for execution under the applicable rules.

2. Where there is a decision with final force and effect on the ascertainment of violation and expedition of proceedings, the requesting party may file a lawsuit for compensation of damages under paragraph 3 of this Article.

3. The statement of claim for compensation of damages shall be filed with

the civil court of first instance, where the body against whom the violation is ascertained has its seat. The lawsuit lapses within 6 months from the violation being ascertained by a decision with final force and effect.

Article 399/7
Trial of a request or statement of claim

1. Adjudication of a statement of claim, under Article 399/6 paragraph 3, shall be made pursuant to ordinary judgement rules, within a period of 3 months from the filing of the statement of claim.

2. Examination of the request under Article 399/6, paragraph 1, is made in consultation chamber, and the court examining the case shall make a decision within 45 days of the filling of the request. Within 15 days of the filling of this request, the body alleged to have committed the offense, shall send a copy of the file and an opinion in writing to the court examining the request.

3. If during the examination of the request, the body that is carrying out actions, takes the actions that are required by the party within 30 days of the filing of the request, the examination of the request ceases.

4. In case the request is rejected, it cannot be reiterated for the same facts.

Article 399/8
Decision making

1. Upon the examination of the request, the court may:

   a) Accept the request, the finding of violation, ordering certain procedural actions to be taken within the time limits during the trial or execution;

   b) Reject the request.

2. The court's decision is final and irrevocable.

Article 399/9
Acceptance of a request

1. The court decides on accepting the request, when the violation of reasonable time is proven under Article 6/1 of the European Convention "On Protection of Human Rights and Fundamental Freedoms".

2. The court, in determining the violation, shall assess the complexity of the case, the subject matter of dispute, proceedings or trial, the conduct

of the parties and panel in the trial or the conduct of the bailiff and any other person connected with the case.

Article 399/10
Contents of decision on awarding damages

1. Upon the examination of the statement of claim, the court decides to award damages from 50 000 to 100 000 ALL, for each year, or month in relation to the year, beyond the reasonable time.

2. Damages shall be awarded by keeping in mind:

a) The difficulty of the process in which the violation is proven;

b) The conduct of the panel or the bailiff and parties;

c) The nature of interests in the case;

ç) The value and importance of the case, regarding the subject matter of dispute or execution, evaluated also in relation to the personal circumstances of the parties.

3. The amount of compensation of the damage should not exceed the scope of the lawsuit or execution.

Article 399/11
Binding enforcement of guidelines

Guidelines and conclusions of a higher court issued during the examination of a request under Article 399/6, paragraph 1, are binding for the court that examines the case on the merits or for the body that is conducting the execution of a court decision with final force and effect.

Article 399/12

The decision with final force and effect of the competent court under Article 399/6, shall be forwarded to the High Justice Inspector, to assess whether the delays caused by judges, under this Chapter, constitute disciplinary offenses.

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(The title and the provisions on arbitration are repealed upon entry into force of the law on arbitration as foreseen by Law no. 122/2013, article 30)

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(Repealed by Law no. 122/2013, dated 18.4.2013, article 30)

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(Repealed by Law no. 122/2013, dated 18.4.2013, article 30)

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CHAPTER I
THE MEANS AND TIME LIMITS OF APPEAL
(Amended by Law no. 8812, dated 17.5.2001, article 69)

Article 442
Means of appeal
(Amended by Law no. 8812, dated 17.5.2001, article 126)

Court decisions shall be appealed via the following routes: appeal by the Court of Appeal, recourse by the High Court and request for reconsideration.

Article 442/a
Appeal
(Added by Law no. 8812, dated 17.5.2001, article 70)

Appeal is the legal action by which parties or other participants in the process present their arguments against a decision by the court and against the actions of the bailiff, with the aim of defending their rights and interests.

Article 442/b
Recourse
(Added by Law no. 8812, dated 17.5.2001, article 71)

Recourse is the action by which parties or other participants in the process, in accordance with the regulations provided in this Code, present their arguments against a decision made by the First Instance Court and that of the Court of Appeal, to the High Court.

Article 443
Timescale for appeal
(Added paragraph IV, amended paragraph II by Law no. 8812, dated 17.5.2001, articles 72, 126; paragraph IV partially amended by Law no. 44/2021, article 11)

Appeals against final decisions of the First Instance Court must be filed with the Court of Appeal within 15 days.

Recourse against decisions of the Court of Appeal must be filed with the High Court within 30 days.

Request for reconsideration of a decision of the First Instance Court must be filed within 30 days.

Specific appeals and recourses must be filed within 5 days.

Article 444
Commencement of time limits for appeal procedure
(Amended by Law no. 38/2017, article 84)

The time limits set out in Article 443 shall be preclusive and they start to run on the date following the notification of the reasoned decision.

The United Chambers of the Supreme Court, in their unifying decision No. 8, dated 24.03.2005, have addressed for legal unification the following matters:

1. In cases where a request is filed for the review of a final-form decision, should Article 445 or Article 496 of the Code of Civil Procedure apply?
2. Does the commencement of the time limit apply uniformly to all cases provided for in Article 494 of the Code of Civil Procedure, or does it depend on the specific ground for review invoked in each case?

The United Chambers of the Supreme Court held that:

In cases involving the filing of a request for the review of a final-form judicial decision, Article 445 of the Code of Civil Procedure is to be applied in conjunction with Article 496, particularly in regard to the one-year preclusive time limit. As a result, any request for review submitted after the expiration of this one-year period shall be considered inadmissible.

The facts or legal circumstances that constitute valid grounds for review are strictly enumerated in Article 494 of the Code of Civil Procedure. Except for the case provided in point "a", the remaining grounds outlined in points "b," "c," "ç," "d," and "e" of Article 494 - interpreted together with Article 495 - generally involve a final-form judicial decision, either of a civil or criminal nature.

In particular, under point "d" of Article 494, the ground for review may arise from a judicial or administrative decision that overturns a prior decision - either a decision of another institution or its own prior decision - provided such reversal is within the competence conferred by law. In such cases, the overturned decision must constitute the basis for the decision being subjected to review.

Regardless of the specific legal ground for review, the thirty-day time limit - calculated from the date the applicant became aware of the ground for review - and the one-year time limit - calculated from the date on which the ground arose - apply uniformly to all grounds for the review of final-form judicial decisions. These deadlines, being preclusive (due to *decadenza*), are not subject to suspension, interruption, or reinstatement.

In conclusion, the United Chambers of the Supreme Court hold that a request for the review of a final-form civil decision is to be examined by the Civil Chamber in conciliation session, without the participation of the parties.

Article 445
Preclusion of appeal
(Amended by Law no. 8812, dated 17.5.2001, article 74, Law no. 122/2013, article 32)

Appeals with the Court of Appeal, recourse with the High Court cannot be made after one year has elapsed from the announcement of the decision. This provision shall not be applicable in cases where the absent party proves that they had no knowledge of the court process due to the incorrect notices being issued.

Article 446
Court where appeal is presented

Appeal is presented to the court which has issued the decision against which appeal is made.

Article 446/1
(Added by Law no. 122/2013, article 33)

The decision of the Court of Appeals, which changes a decision of the first instance court, based on which an execution order is issued, according to part fourth of this Code, is accompanied in any case by the order of execution, signed by the presiding judge of the panel which rendered the decision. The execution order is submitted to the judicial secretary and after is confirmed by the chancellor is notified to the court of first instance, which rendered the revised decision, as Well as notified to the parties, according to the rules provided by Chapter IV, title IV, part I.

Article 447
Notice of appeal
(Amended by Law no. 122/2013, article 31)

Appeal is notified to the parties in conformity with the rules provided in Chapter IV of Title VI of Part I of this Code on notice and summons to the court.

Article 448
Joinder of appeals
(Amended by Law no. 38/2017, article 85)

All appeals made separately against the same decision are joined in a single process.

This provision shall not apply where the appeals are of various kinds.

Article 449
(Amended by Law no. 8812, dated 17.5.2001, article 126)

Execution of the appealed decision shall be suspended until the Court of Appeal has completed consideration, unless the law provides otherwise. In the case of recourse to the High Court, the decision may be suspended by the High Court.

Article 450
Dismissal of appeal
(Amended by Law no. 38/2017, article 86)

1. The single judge of the court that issued the decision, in consultation chamber, immediately after the filing of the appeal, shall decide to dismiss the appeal when:

a) It is belated;

b) Deficiencies are not corrected within the prescribed deadline, under article 455 of this Code;

c) It is made against a decision against which no appeal is permitted;

ç) It is made by a person who is not legitimized to appeal;

d) The appeal is waived.

2. Against the decision of dismissal of appeal may be filed a separate complaint.

3. Dismissal of the appeal may be declared in all instances of adjudication.

Article 450/a

(Added by Law no. 8812, dated 17.5.2001, article 76)

Should the court accept the request, the court shall send a copy of such request to the opposing party, while the documents pertaining to the case and the appeal shall be sent to the court of appeal the day after the expiration of the allocated timescale or earlier than the expiration of the allocated timescale provided that all parties have submitted their request to appeal.

Article 451
Irrevocable decision

The decision of the court becomes irrevocable when:

a) it cannot be appealed against;

b) no appeal has been made against it within the time limits determined by law or when the appeal has been withdrawn;

c) the appeal presented has not been accepted;

ç) the decision of the court is left in effect, is changed or trial in the second level has been ceased.

Article 451/a

(Added by Law no. 8812, dated 17.5.2001, article 77)

A decision that has become irrevocable shall be mandatory for parties, their heirs, for the people who take away rights from the parties, the court that has issued the decision and for all other courts and other institutions.

A decision that has become irrevocable has authority over only what has been decided between the same parties, on the same subject and for the same cause. A conflict that has been resolved via an irrevocable decision cannot be tried again unless the law provides otherwise.

CHAPTER II
FILING THE APPEAL AND ADJUDICATION AT APPEAL
(Added by Law no. 8812, dated 17.5.2001, article 78)

Article 452
Decisions which may be appealed against

All decisions issued by a court of first level may be appealed against to the court of appeal, except for the cases when appeal is excluded by law.

The United Chambers of the Supreme Court, in unifying decision No. 20, dated 15.11.2007, have addressed for legal unification the following matters:

1. When central or local administrative institutions file an appeal with the Court of Appeal against a decision of the Civil Service Commission (K.Sh.Civil), should the Court of Appeal apply the procedural rules of a court of first instance, or proceed according to the standard appellate procedure?
2. In cases where the parties do not appear, should the Court of Appeal apply Article 179 of the Code of Civil Procedure, or Article 461 of Law No. 8431, dated 14.12.1998 - which stipulates that non-appearance of the parties does not prevent the court from examining the case - when no valid reason has been submitted for such absence?

The United Chambers of the Supreme Court held that:

In light of the established conclusion that the Civil Service Commission (K.Sh.Civil) serves as a first-instance administrative authority, and that its decision is to be treated as equivalent to a judicial decision rendered at first instance, the United Chambers of the Supreme Court hold that, in addressing the questions raised, the Court of Appeal must apply the procedural rules provided in Title II, beginning with Article 452 and the subsequent provisions of the Code of Civil Procedure, governing the filing and examination of appeals.

Accordingly, the Court of Appeal shall review appeals filed against decisions of Civil Service Commission pursuant to Article 461 of the Code of Civil Procedure. Under this provision, the non-appearance of the parties - provided they have been duly notified of the hearing - does not bar the court from adjudicating the case.

In conclusion, the United Chambers of the Supreme Court hold that the procedure applicable before the Court of Appeal, in cases involving appeals against decisions of the Civil Service Commission, shall be that prescribed by Article 461 of the Code of Civil Procedure. Therefore, the Court of Appeal shall proceed with the appellate review of the case.

Article 453
Signing of appeal

The appeal addressed to the court of appeal must be signed by the party itself, the advocate or the representative equipped with power of attorney.

Article 454
Content of appeal

The appeal must indicate:

a) the parties to the case;

b) the decision against which appeal is made;

c) the causes for which appeal is made;

ç) what is requested by the appeal.

Article 455
Documents that must be attached to appeal
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 79)

The appeal must be accompanied by the following:

a) copies of the appeal and other documents for each of the persons within the respective parties participating in the case;

b) Power of attorney when the appeal is filed by the lawyer or representative of the party.

In the event that the appeal does not meet the above conditions, as well as those of Articles 453 and 454 of this Code, the court shall notify the party to correct the deficiencies within 5 days; otherwise, the appeal shall be returned.

Article 456
Objection appeal

The party who has not made an appeal, or the party against which appeal is made may object to it by a counter-appeal within 5 days from receiving notice on the appeal of the other party.

Objection appeal shall be notified to the other parties in trial in conformity with the rules for the notification of the appeal.

Article 457
Intervention in appeal process
(Repealed by Law no. 8812, dated 17.5.2001, article 80)

Article 458
Rescheduling of appeal timescales
(Amended by Law no. 8812, dated 17.5.2001, article 81)

When parties have lost the right of appeal for legitimate reasons, they may submit a request to the court that issued the decision for the timescale to be renewed. The request shall be reviewed by the court and a separate appeal may be filed against the decision of the court.

Article 459
Decline of requests
(Amended by Law no. 38/2017, article 87)

1. When requests and allegations unacceptable by the court of first instance do not recur in the appeal, it is considered that they have been renounced.

2. No new requests can be raised in appeal, which have not been submitted to the judgement at first instance.

Article 460
Adjudication of the case in appeal
(Amended by Law no. 38/2017, Article 88; point 5 partially amended (the first sentence), and the fourth sentence of point 5 and point 5/1 added by Law no. 44/2021, Article 12)

1. The rapporteur of the case is determined by lot.

2. The rapporteur shall set the date and time of the hearing in accordance with the timetable for examining cases, taking into account the order in the time of arrival of the file at the Court of Appeal.

3. The parties may request the rapporteur in writing to accelerate the reviewing of the case due to particularly serious and motivated reasons, when this is not inconsistent with the law.

4. The High Judicial Council defines more detailed rules for the enforcement of this Article.

5. The notification of the date and time of the hearing as well as the composition of the panel that adjudicates the case shall be made by the court of appeal with advertisement in its premises and in the respective court of first instance. This notification shall also be made on the internet website of the court of appeal, and on the internet website of the relevant court of first instance, if any, and, by individual notice in case the parties have given an email address in the first instance court. The announcement or notification shall be made at least 15 days before the hearing. When the composition of the adjudicating panel is not notified according to the rules stipulated in this paragraph, the parties may claim the postponement of the trial, apart from the cases when they participate in the trial and they do not claim the recusal of the judges.

5/1. The parties have the right to submit written submissions up to 5 days before the review of the case regarding the reasons contained in the complaint and counter-appeal.

6. For retrial cases, or when the reopening of judicial investigations has been declared, or when a hearing takes place before the 15-day deadline, the notification shall be made directly to the parties, their representatives and the prosecutor, according to the rules of Part I, Title VI, Chapter IV, "Notifications" of this Code.

The United Chambers of the Supreme Court, in their unifying decision no. 14, dated 16.02.2001, addressed for legal unification the following legal question:

1. What is the starting point for the time limit to file a recourse (appeal to the Supreme Court) against a judgment rendered in the absence of the party submitting the recourse - i.e., should the recourse be filed within 30 days from the date the judgment is issued, or within 30 days from the notification of the judgment?

The United Chambers of the Supreme Court held that:

In cases where the appellate hearing is conducted in the absence of one of the parties, but the procedural requirements set forth in Articles 460 and 461 of the Code of Civil Procedure have been

fulfilled - namely, that the parties have been duly notified, the court has verified the grounds for absence, and service of process has been confirmed as regular - the final decision of the Court of Appeal must still be formally notified to the absent party. In such cases, the 30-day time limit for filing a recourse shall be calculated from the day following the notification of the decision.

It is precisely due to procedural ambiguities, inconsistencies, and interpretative contradictions within the referenced provisions that a unified interpretation is required - based on careful legal analysis and reasoned conclusions.

Through the interpretation of this provision, it is concluded that - notwithstanding the general rule that the time limit for filing a recourse is 30 days and that this time limit is preclusive, meaning that it cannot be reinstated or extended beyond the 30-day period - an exception exists. Otherwise, the above-mentioned provision, which establishes a one-year preclusive time limit, would be rendered meaningless.

The exception must be found in the interpretation of the phrase "regardless of notification".

It is understood that this refers specifically to the notification of the decision of the appellate court to the party who was absent from the hearing.

This, in itself, serves as further support for the unified interpretation adopted by this decision.

Article 461

(Added paragraph II, III by Law no. 8431, dated 14.12.1998, article 2)

Initially, the court shall verify the accuracy of the parties' presentation, merge appeals against the same decision and make efforts to settle the case amicably.

If parties who received notification by means of announcement fail to attend, it does not hinder the examination of the case unless acceptable reasons are provided for their absence.

The court may not review the case in their absence, when the oral testimony of the absent parties is required or when the notification was incorrect.

Article 462
Participation of prosecutor
(Repealed by Law no. 8812, dated 17.5.2001, article 82)

Article 463
Renunciation from the appeal

The appellant or its representative may renounce from the appeal at each stage of the trial of the case in appeal. In this event the cessation of the consideration of the case by the court of appeal is decided.

Article 464
The court session
(Amended by Law no. 8812, dated 17.5.2001, article 83)

The court session shall commence with a report by one of the members of the adjudicating body. Afterwards the parties, if present, provide explanations. The party filing the appeal is the first to take the stand, followed by the other parties involved in the trial. When the former has presented their written evidence, they are read by one of the members of the adjudicating body. If the prosecutor is appealing against the decision of the court on a lawsuit he had previously filed, then he shall speak first.

Article 465
Limits of examination of cases on appeal
(Amended by Law no. 38/2017, article 89)

1. The Court of Appeal considers cases within the limits of appeal.

2. In considering cases on appeal, there shall be taken into account, to the extent applicable, provisions on the procedure at the first instance.

3. At the request of parties, or ex officio, the Court of Appeal shall partially or entirely reopen judicial investigations".

4. No new requests can be submitted in the proceedings at the Court of Appeal, to add or change elements of the lawsuit, except the request for the costs of the hearing on appeal.

5. The Court of Appeal may accept for review new facts and evidence, if:

a) The interested party proves that, not because of its fault, during the examination of the case before the Court of First Instance, it was not able to present these facts and/or new evidence;

b) The interested party has requested, but the court of first instance,

against the law, did not take these facts and/or evidence, which are relevant to the case;

c) The interested party can prove that it could not be aware of the new facts and/or evidence during the proceedings at first instance.

6. This provision does not apply to obtaining judicial or extrajudicial confession.

Article 465/a
Appellate adjudication in consultation chamber
(Added by Law no. 38/2017, article 90; paragraph 2 partially and paragraph 3 amended by Law no. 44/2021, article 13)

1. In cases where the Code provides for the appellate proceedings be conducted in consultation chamber, the proceedings shall be conducted on the basis of acts and/or documents.

2. The Rapporteur shall prepare the summarized report and shall set the date and time for a hearing in consultation chamber, ordering the notification of the parties under Article 460 of this Code, on the composition of the panel, the date, time and venue of the examination of the case. Parties are entitled to submit, within 5 days before the hearing of the case, in consultation chamber, written submissions on the causes raised on the appeal and counter-appeal.

3. The court shall, in a consultation chamber, decide to transfer the case to a hearing in the presence of the parties, when it deems that the judicial debate is necessary:

a) To evaluate whether new facts or evidence should be received or accepted, according to article 465 of this Code; or

b) When it questions aspects of the fact or of the law, for which the parties have not presented their opinion earlier.

4. For the examination of the case in consultation chamber a protocol shall be kept by the judicial secretary.

Article 466
Decision of the Court of Appeal
(Amended item "d" by Law no. 8812, 1 dated 7.5.2001, article 126; paragraph II added by Law no. 44/2021, article 14)

Following the examination of a case, the Court of Appeal may rule to:

a) endorse and sustain the decision of the First Instance Court;

b) amend the decision;

c) revoke the decision and dismiss the case;

ç) revoke the decision and order a retrial by the First Instance Court for cases provided by Article 467 of this Code.

A special recourse is allowed against the decision of the court of appeal revoking the decision of the first instance court and the dismissal of the case.

Article 466/1

(Repealed by Law no. 38/2017, article 91)

Article 467
Order for retrial

(Amended by Law no. 8431, dated 14.12.1998, article 3; Law no. 8812, dated 17.5.2001, articles 84 and 126, Law no. 122/2013, article 34; Law no. 38/2017, article 92; amended by Law no. 44/2021, article 15)

The Court of Appeal quashes the decision of the court of first instance, partially or entirely, under the limits of Article 121 of this Code and sends the case for retrial when:

a) The first instance court has violated the provisions on jurisdiction and competence;

b) the composition of the panel has not been correct or the decision has not been signed by its members, or the principle of impartiality has been violated;

c) The first instance court has decided to dismiss the case in violation of the rules established by this Code;

ç) The case was tried in absentia of participants in the process, without being aware of the day of the hearing;

d) The joint judgement is not correctly established under Article 162, paragraph 2 of this Code;

dh) Where the claim, the court record, appeal, and any other document that influenced decision making are missing or invalid;

e) The first instance court did not conduct judicial review of all requests related to the subject matter of dispute.

A special recourse is allowed against the decision of the court of appeal dismissing the decision of the first instance court completely or partially and sending the case for retrial.

The First Instance Court during the retrial is obliged to follow the decision of the Court of Appeal regarding any procedural decisions decided in that.

The court, by means of and intermediate decision, may rule not to carry out specific actions, when, due to new circumstances emerging in the retrial, are deemed to be unnecessary. A separate appeal can be made against this decision.

At retrial, the invalid claims proven in previous proceedings cannot be raised, when the relevant decisions have not been quashed for them. The court that will carry out the retrial, for the sake of proceedings, shall take for granted the evidence that is administered regularly in previous proceedings, unless the decision is quashed because of paragraphs (a), (b), (ç), (d) of this Article. In these cases, the court may administer again the evidence, where that has been tasked by the higher court or obtain new evidence, where this is necessary for conducting full and comprehensive investigations. No new claims different from those that have been accepted in the decision of the court of appeal can be raised in the retrial, apart from the need for implementation of the tasks set by that court.

Article 467/a

(Added by Law no. 8431, dated 14.12.1998, article 4)

Should the Court of Appeal revoke the decision, it cannot order the return for retrial, but shall examine the case as a First Instance Court.

When the decision is revoked due to non-compliance with the duties set by the highest court, without a specific decision taken in accordance with the Article 467 of this Code, the Court of Appeal, upon the request of parties, can transfer the fee of all costs incurred to the relevant adjudicating body.

The United Chambers of the Supreme Court, in their unifying decision no. 979, dated 29.09.2000, held that:

> In the application of Article 467/a of the Code of Civil Procedure, when the Court of Appeal annuls the decision for the second time and retains the case for adjudication as a court of first instance, the case must be examined by the same judicial panel and without initiating a new proceeding.

In such circumstances, the issue arises as to whether, under Article 467/a of the Code of Civil Procedure, the Court of Appeal, upon annulling for the second time the decision of the district court, proceeds to adjudicate the case itself within the same proceeding and by the same judicial panel, acting as a first-instance court, or whether it merely annuls the decision, requiring that the case be retried separately, potentially before a different judicial panel.

Article 467/a provides that, when annulling a decision, the Court of Appeal may not remand the case for retrial a second time, but must instead adjudicate the case itself as a court of first instance. The term "Court of Appeal", as used in this provision, must be understood in a procedural, not institutional, sense, and therefore refers to the judicial panel.

Accordingly, when the provision states that the Court of Appeal shall adjudicate the case itself as a court of first instance, it means that the same judicial panel shall continue the proceedings without interruption. The phrase "as a court of first instance" does not mean that the Court of Appeal becomes a first-instance court institutionally, but that - similar to the situation addressed in Article 465 of the same Code - it is authorized to repeat the judicial investigation in whole or in part.

Conversely, had the legislator intended for the Court of Appeal to function institutionally as a court of first instance in such cases, it would have provided for the right to appeal against the decision issued under this procedure - a provision which does not exist. Moreover, the purpose of the legislator in enacting this rule was to promote judicial economy, i.e., to avoid undue delays in the resolution of cases.

Accepting the opposite interpretation - namely, that under Article 467/a, when a case is adjudicated for the second time by the Court of Appeal, it must be processed in two separate proceedings (first as an appellate and then as a first-instance court), potentially involving different judicial panels - would result in delays equivalent to those that would occur if the case were remanded to the district court for retrial.

Accordingly, in such cases, through a single proceeding and by means of one final decision, the Court of Appeal both annuls for the second time the decision of the district court and adjudicates the case on its merits.

Article 467/b

(Added by Law no. 8812, dated 17.5.2001, article 84; amended by Law no. 38/2017, article 93)

When the court, for a case that was not under its competence, has issued a just decision and, on the other side, the competence of the court competent to try the case has not been surpassed, the court of appeal has the right not to revoke the decision, but to satisfy itself with informing the respective court of the irregularity of its decision.

When the court of appeal finds that there are established the conditions to supplement the decision provided for in Article 313 of this Code, the court decides to supplement them by itself, while noting the irregularity to the first instance court.

Article 468

(Repealed by Law no. 38/2017, article 94)

Article 469
Suspension of execution of decisions

(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 126; paragraph II repealed by Law no. 44/2021, article 16)

Should the decision of the First Instance Court be revoked and the case is ordered for retrial, the execution of the decision shall be suspended.

Article 470
Appeal against intermediate decisions

(Amended by Law no. 38/2017, article 95; points 2 and 3 partially amended by Law no. 44/2021, article 17)

1. Intermediate decisions issued by the court of first instance may be amended or withdrawn during the proceedings. These decisions may be appealed together with the final decision.

2. However, in cases expressly provided for in this Code, a special appeal may be filed against intermediate decisions to the appeal court or a special recourse to the High Court, within 5 days of their notice.

3. Special appeals or recourses against intermediate decisions shall be examined in consultation chamber, within 30 days of their registration in the higher court.

Article 471
Suspension of execution of intermediate decisions

The submission of the appeal against an intermediate decision suspends neither the trial nor the execution of the decision, except when it is otherwise provided in this Code or when the court of appeal decides on suspension until it issues the decision on the separate appeal.

Article 471/a
Examination of complaints against non-final decisions
(Added by Law no. 44/2021, article 18)

The special appeals and recourses against non-final decisions are reviewed in the counselling chamber within 30 days from the day of their registration at the higher court.

TITLE II
RECOURSE TO THE HIGH COURT
(Amended by Law no. 8812, dated 17.5.2001, article 126)

Article 472
Causes for recourse
(Amended by Law no. 8812, dated 17.5.2001, Article 87; Law no. 122/2013, article 35; Law no. 38/2017, article 96)

1. Decisions announced by the court of appeal and those of first instance in the instances provided for in this Code may be appealed through recourse to the High Court:

a) for incorrect implementation of material or procedural law, of essential importance for the unification, certainty and/or development of case law;

b) when the appealed decision is different from the case law consolidated by the Civil Chamber or the unified case law of the Joint Chambers of the High Court;

c) there are serious violations of procedural norms, resulting in the invalidation of the decision or of the judgment procedure, in accordance to article 467 of this Code.

2. Recourse shall not be allowed against decisions of the court of appeal in claims amounting up to 150,000 ALL.

Article 473
(Repealed by Law no. 8812, dated 17.5.2001, article 88)

Article 473/a
Limits of examination of recourse
(Added by Law no. 38/2017, article 97; paragraph II added by Law no. 44/2021, article 19)

The High Court shall consider the recourse within its limits, unless the law provides otherwise.

In instances where the High Court brings for discussion matters of the law, which are examined *ex officio* and for which the parties have not previously submitted their opinion, prior to the review the parties shall be notified, and a deadline shall be set for the submission of their submissions on matters of the law. The notification in these cases is carried out according to the general rules.

Article 474
Signing of recourse
(Amended by Law no. 8812, dated 17.5.2001, Article 126; Law no. 38/2017, article 98; Amended by law no. 44/2021, article 20)

The recourse and all other requests filed with the High Court shall be signed by the advocate representing the party, and if the party so requests, also by the latter.

Article 475
Content of recourse
(Paragraph I letter "ç" amended and paragraph II added by Law no. 44/2021, article 21)

Recourse must contain:

a) the parties to the case;

b) the decision objected;

c) a succinct presentation of the facts of the case;

ç) the reasons for which the decision is objected, as well as the arguments that support the allegation that there are reasons for recourse according to the provisions of Article 472 of this Code;

d) the power of attorney if recourse is made by the advocate or the representative of the appellant.

The recourse may be drafted in accordance with the format approved by the Council of the High Court.

Article 476
Filing the recourse
(Amended by Law no. 8812, dated 17.5.2001, articles 89 and 126; amended by Law no. 44/2021, article 22)

1. The recourse shall be filed with the secretariat of the court that renders the decision, within the time limit of 30 days from the moment the parties are notified.

2. Together with the recourse, the following shall be filed:

a) The certified copy of the objected decision and when necessary, also the certified copy of the notification when it has been made;

b) The specific power of attorney;

c) The acts and the documents on which the recourse was based, in as many copies as the number of the parties.

3. Where the recourse does not meet the conditions provided for in paragraphs 1 and 2 of this Article, it is not signed in accordance with the provisions of Article 474, or when the recourse is not lodged in accordance with Article 475 of this Code, the rapporteur or the sole judge notifies the party to rectify the recourse deficiencies within 5 (five) days. In this case, the examination of the recourse is made in consultation chamber.

4. Where the complainant does not fill in or rectify the flaws within the time period, the recourse shall be considered not to have been lodged and it shall be returned to the party, along with the other acts submitted by them. A separate recourse may be filed against the decision of the judge returning the recourse.

5. When the flaws of the recourse are rectified within the set time limit, it is considered registered on the date of filing with the court.

6. The secretariat of the court issuing the contested decision shall, after the revision by the judge whether the recourse has been completed on time, forward the file together with the documents to the secretariat of the High Court.

7. When the flaws of the recourse have not been ascertained by the lower court, the rapporteur of the case at the High Court shall, by way of a decision, notify the party to rectify the flaws within 5 (five) days. When the

flaws of the recourse are not rectified within the deadline, the rapporteur shall, in the deliberations room, decides to return the recourse. No appeal may be filed against this decision.

Article 477
Counter-recourse

The party against which recourse is made may object to it by means of a counter-recourse, which must be notified to the recourse maker at his place of abode within 20 days from the notification of the recourse. If this notice is lacking, the party cannot present counter-recourse but can only participate in oral discussion.

The rules provided in articles 456 and 457 of this Code are applied for the counter-recourse.

Article 478
Presentation of other documents

Deposition of acts and documents which have not been presented in previous levels of trial is not accepted, except for those which are related to the appealed decision and the acceptance of the recourse or counter-recourse.

Deposition of documents as above must be notified to the other parties.

Article 479
Suspension of execution of decision
(Amended by Law no. 8812, dated 17.5.2001, article 126; Law no. 38/2017, article 99)

1. The High Court, upon the filing of recourse, at the request of the party, may decide suspension of execution of the decision when:

a) Immediate execution of the decision shall incur serious and irreparable consequences; and/or

b) The party filing the recourse produces evidential guaranties that shall ensure the execution of the decision.

2. The request for suspension is submitted in recourse or separately. The High Court takes the necessary measures that the request be notified to the other party and the request be tried as soon as possible. The party has the right to present in writing, within three days, from the following day of notification of the request for suspension, the arguments and requests.

3. The request is examined in consultation chamber.

4. If the circumstances of the case indicate and the risks exist that the right of the recourse will be impossible to be enforced, upon a reasoned decision, the request may be examined without notifying the parties.

5. The decision of the High Court on the request for suspension must be notified to the parties.

6. The decision of the High Court on the request for suspension may be revoked or amended upon request of the parties. The parties shall be notified of the examining of the request changing or revoking a suspension measure. The other party, within 3 days, has the right to submit claims in writing. The requests shall be examined in consultation chamber.

7. In any event, the High Court shall reason its decision.

Article 480
Non-acceptance of recourse

(Amended by Law no. 8812, 17.5.2001, article 126, Law no. 122/2013, article 36)

Non-acceptance of the recourse is decided in consultation chamber, in the Chamber, with a judicial panel composed of 3 judges, when:

a) is done for several reasons from those allowed by the law;

b) procedural requests provided by this chapter are not completed;

c) the party which asked for the recourse withdraws from it.

The party against which the recourse is filed, may submit objections according to the rules provided by article 477 of the Code.

The review is made within 60 days from the submission of the recourse, without the presence of the parties, but after the written claims of the parties on the issue of the acceptance are examined.

The same panel of judges decides on any procedural requests from the parties, except on requests to dismiss a judge.

CHAPTER II
TRIAL PROCEDURES

Article 481
Adjudication for the unification or changing of the judicial practice

(Repeal of last sentence of paragraph II by decision no. 46/1999 of the Constitutional Court; amended title, repealed paragraph I by Law no. 8812, dated 17.5.2001, article 90; amended totally by Law no. 44/2021, article 23)

1. The Civil Chamber, *ex officio* or at the request of the parties, may decide to initiate proceedings to unify or change the judicial practice. The initiation of the procedure for changing the judicial practice may also be decided by the President of the High Court.

2. The interim decision of the Civil Chamber or of the Chairperson of the High Court to transfer the case over to a court session determines the issues raised for unification or the unified court practice that should be changed. The decision shall be published, immediately after the reasoning, on the website of the High Court*.

3. The trial for the unification of judicial practice is conducted by the Civil Chamber with a adjudicating panel of 5 judges, wherein participate the judicial panel that is examining the recourse and two other judges of the Chamber, appointed by lot.

4. The decision to change the unified judicial practice is made by the Joint Chambers of the High Court. The President of the High Court, as the President of the Joint Chambers, sets the date and time of the adjudication of the case for changing the judicial practice. The Joint Chambers of the High Court shall adjudicate according to the rules laid down for the chamber when not less than two-thirds of all members of the High Court participate.

5. The date and time of the hearing shall be notified to the parties by the judicial secretary in accordance with the general rules of notification, at least 15 days before the date of the hearing.

6. The Civil or Joint Chambers shall, ex officio or at the request of the parties, may decide to amend the issues raised for unification or changing the judicial practice. This interim decision shall be published on the website of the High Court.

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* See Decision No. 46/1999 of the Constitutional Court, as the applicable norm has subsequently been amended by the legislator as it is.

7. Due to the interest raised from the unification or amendment of the judicial practice in these adjudications, the High Court may, accordingly, request the opinion in writing from the State Advocate, as well as from public or private legal people, who are deemed to have special knowledge on the legal cases presented for the unification or the amendment of the judicial practice. The High Court shall, in its request for providing an opinion in writing, determine a time limit within which the opinion may be provided, which in any case shall not be less than 14 days. The opinions in writing are not mandatory and shall be published on the electronic webpage of the High Court.

8. The decision of the Civil Chamber and the Joint Chambers is binding on the courts in adjudicating similar cases.

Article 482
Adjudication of the case

(Repealed paragraph I, amended paragraph II by Law no. 8812, dated 17.5.2001, article 91; amended by Law no. 122/2013, article 37; Law no. 38/2017, article 100; amended totally by Law no. 44/2021, article 24)

1. The adjudication of the case before the High Court shall, as a rule, be done on the basis of documents in the counselling chamber.

2. The rapporteur judge appointed by lot sets the date and time for the hearing of the case in the counselling chamber in accordance with the rules of trial planning provided by law.

3. The secretariat of the High Court announces the lists for the revision of recourses at least 15 days before the review date. The notification of the day, time and composition of the adjudication panel reviewing the recourse is made by posting within the premises of the High Court, as well as on its website and by individual notification, as long as the parties or their representatives have left their electronic data of contact at other instances of adjudication.

4. The parties may request in writing from the rapporteur to expedite the examination of the case for particularly serious and motivated reasons, when this is not contrary to law.

5. The rapporteur judge submits the explanatory report, reflecting in it, among others, the reasons for the acceleration of the case, if any, the content of the contested decision, the allegations and reasons raised in the recourse, the objections presented in the recourse, the review of the facts relevant to the decision and his proposal for legal settlement of the case.

6. The minutes are kept by the court secretary for the examination of the case in the counselling chamber.

Article 482/a
Transferring the case over to judicial hearings
(Added by Law no. 44/2021, article 25)

1. The court, in counselling chamber, shall decide on the examination of the case in a court hearing in the presence of the parties, in case that:

a) The case is of significance in terms of law for unifying or developing the judicial practice;

b) It is deemed necessary by the Civil Chamber to summon and hear the parties due to the problems or complexity of the case, according to letters "b" and "c" of Article 472, as well as the second paragraph of article 473/a of this Code.

2. The above decision, as well as the date and time of the judicial hearing shall be notified to the parties by the judicial secretary in accordance with the general rules of notification, at least 15 days before the date of conducting the hearing.

Article 483
Judicial review
(Repealed paragraph III, added last paragraph by Law no. 8812, dated 17.5.2001, article 92)

At the court hearing, the rapporteur shall present the facts pertinent to the making of the decision, the content of the appealed decision and the reasons for recourse and for counter-recourse.

Following the report, the chairperson shall invite the legal representatives of parties to present their defence.

Repealed.

Objection shall not be permitted, however the legal representatives of the parties may, during the same hearing, present their opinions to the court, briefly, in writing.

A record of the court session shall be taken by the court secretary.

Article 483/a
Preliminary proceedings
(Added by Law no. 44/2021, article 26)

1. If the Civil or the Joint Chambers of the High Court, during the examination of the case, in the counselling chamber or in the court hearing, decide to address the European Court of Human Rights or other international courts, according to the obligations deriving from international agreements ratified by the Republic of Albania, shall take a decision to suspend the examination of the case.

2. The decision on suspension lasts until the decision of the international court. The decision of the international court shall be notified to the parties together with the date of the hearing.

Article 484
Taking of decision
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 93)

Following the discussion of the case, the court shall withdraw to consultation chamber, to take the decision. In certain cases, the complicated nature of the case or its importance may postpone the decision-making process for as many days is necessary.

The decision shall be signed by all members of the adjudicating body.

Article 485
Decisions of the High Court
(Amended by Law no. 8812, dated 17.5.2001, Article 126; Law no. 38/2017, article 101; amended by Law no. 44/2021, article 27)

1. After the examination of the case, the Civil Chamber or Joint Chambers of the High Court decide:

a) non-admission of the recourse, in the instances where it has been filed for other reasons as those provided for in Article 472 of this Code;

b) quashing the decision of the appeal court and upholding the decision of the first instance court;

c) quashing the decision of the Appeal Court and remitting the case for re-trial to this court by another adjudication panel;

ç) quashing the decisions of the appeal court and the first instance court and remitting the case for retrial to the first instance when the

non-final decision of the court of first instance was taken at variance with the law and this violation was not found out by appeal court;

d) quashing the decision of the court of first instance and the court of appeal and terminating the adjudication of the case;

dh) amending the decisions of the court of first instance and court of appeal and resolving the case in a final form, when the application of the procedural or material law is not dictated by the need to re-evaluate the facts or evidence of the case;

e) upholding the decision of the Appeal Court;

2. In cases where the Civil or the Joint Chambers of the High Court decide on the unification or changing the judicial practice, the court formulates in its decision the rule of law for each issue raised for settlement in the interim decision taken during the adjudication of the case. In this case, the decision is published in the Official Journal.

Article 485/a
Consequences of revocation of an unjust decision that is enforced fully or partially
(Added by Law no. 10052, dated 29.12.2008, article 12)

When the new decision taken after revocation is different from the first decision that is enforced fully or partially, the person who has benefitted is obliged to return all the benefits obtained from enforcement of the decision.

Article 485/b
Notification of the decision of the High Court
(Added by Law no. 44/2021, article 28)

The judicial secretariat notifies the decisions of the High Court according to Article 316 of this Code.

Article 486
Mandatory implementation of instructions
(Amended by Law no. 8812, dated 17.5.2001, article 126)

The instructions and conclusions of the High Court are mandatory for the court which reconsiders the case.

Article 487
Errors in reasoning of the decision
(Amended by Law no. 8812, dated 17.5.2001, article 94)

Errors in the reasoning of the decision shall not be considered as grounds for its encroachment, when the settlement is in principle fair. In this case, the court shall be limited in correcting the justification.

Article 488
Trial costs

The court, in case it dismisses the recourse, charges the cost of the trial to the one who made the recourse.

Article 489
Non-repetition of recourse
(Amended by Law no. 8812, dated 17.5.2001, article 95)

A recourse case that is deemed unacceptable may not be represented even in cases where the timeframe determined by law has not expired.

Article 490
Renunciation of recourse
(Added paragraph III by Law no. 8812, dated 17.5.2001, article 96; amended by Law no. 44/2021, article 29)

1. The party may withdraw from the recourse as long as the Civil Chamber or the Joint Chambers of the High Court have not withdrawn for decision-making. The withdrawal is made in writing, signed by the party themselves or their lawyer, provided with a power of attorney to this purpose.

2. The act of withdrawal shall be notified to the parties. Upon withdrawing from the recourse and all parties or their representatives having participated in the adjudication, there is no need for a special notification of the decision for not admitting the recourse, but the decision is made available to the parties.

Article 491
Expenses of renunciation of recourse
(Repealed sentence II by Law no. 8812, dated 17.5.2001, article 97)

In the case of renunciation of recourse, the court shall charge the expenses to the renouncing party.

Article 492
Correction of errors in documentation
(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 126)

If the decision proclaimed by the High Court contains errors in evidential data or in calculation, the interested party is entitled to require, by means of request, their correction or rectification within sixty days from the notification of the decision.

For this type of request, the court deliberates in the consultation chamber, as per the regulations stipulated in the last paragraph of Article 480 of this Code.

Article 493
Retrial
(Amended by Law no. 8812, dated 17.5.2001, articles 98 and 126; paragraph II and III added by Law no. 44/2021, article 30)

The First Instance Court, or the Court of Appeal in the case of retrial, shall apply the same procedural regulations as provided for a trial at this level.

The High Court, when returning the case for retrial, shall determine in the decision which part of the decision or evaluation of fact is quashed and for which part of the dispute the retrial should take place.

The retrial of the case after quashing the decision is limited only to the causes of the decision being quashed. The parts of the decision or adjudication not affected by the higher court shall not be reviewed.

The duties set by the High Court are mandatory for the court that retries the case, with the latter, after completion of these tasks, resolves the case according to its belief.

Invalidities declared in previous trials may not be raised during the retrial. During retrial, parties may not make claims different to those accepted in the decision of the High Court except when alternate claims are considered to be a necessity for reaching conclusions that emerge from the decision of the High Court.

THIRD TITLE
RECONSIDERATION

Article 494

Request for reconsideration and cases of reconsideration
(Amended title by Law no. 8812, dated 17.5.2001, article 99)
(Added paragraph I by Law no. 8812, dated 17.5.2001, article 99)
(Added paragraph by Law no. 10052, dated 29.12.2008, article 13)

The request for reconsideration is a document by which the review of an irrevocable decision of the court is requested.

The interested party may request the reconsideration of a decision that has become irrevocable when:

a) new circumstances or new written evidence pertinent to the case, which could not have been known by the party during the consideration of the case, are discovered;

b) it is proven that the testimonies of the witnesses or experts' statements contributing to the decision have been false;

c) the parties, their representatives or any member of the adjudicating body, who have participated in the trial of the case, have committed criminally punishable acts influencing the decision;

ç) it is proven that the decision is based on forged documents;

d) the decision is based on a decision of the court or of another institution which was subsequently revoked;

dh) the decision has been taken in clear contradiction with another irrevocable decision taken for the same parties, the same subject and for the same cause;

e) where the European Court of Human Rights finds a violation of European convention "On protection of fundamental human rights and freedoms" and its protocols, ratified by the Republic of Albania.

The United Chambers of the Supreme Court, in their unifying decision No. 1, dated 31.01.2006, have addressed for legal unification the following matter:

1. Is the evaluation of the grounds for reviewing a final-form judicial decision to be conducted in a court hearing or in a conciliation chamber (*in camera*)?

The United Chambers of the Supreme Court held that:

- The request for the review of a final-form civil decision is initially examined by the Civil Chamber in the conciliation chamber (*in camera*), without the participation of the parties. However, due to developments in judicial practice, the United Chambers conclude that if, during the conciliation session, the Civil Chamber of the Supreme Court determines that the facts presented by the interested party may constitute valid grounds for the review of a final-form decision, then the matter should not be decided within the conciliation chamber. Instead, it must be referred for adjudication in a court hearing, with the parties duly notified to appear. In this context, the court hearing is not a full trial, but rather an evidentiary session, during which the parties, in accordance with the principle of adversarial proceedings, present their arguments regarding the legal grounds required for review.
- The review of decisions is an extraordinary legal remedy available for the purpose of challenging civil judgments that have acquired final form. Its purpose is to permit a re-examination of the case where it is claimed that the court's decision was factually erroneous. According to Article 494 of the Code of Civil Procedure, such an error in the evaluation of facts may exist when:
  - circumstances that were previously unknown to the court emerge - circumstances which, if known, would have resulted in a different resolution of the case (see Article 494(a); or
  - it is established that the decision was based on forged documents or other grounds listed in Articles 494(c), (d), and (e) of the Code of Civil Procedure.

  New facts or newly discovered evidence that arise after the decision has become final must be such that they could not reasonably have been known at the time the case was adjudicated - whether due to the actions of the opposing party or for any other reason not attributable to the fault of the party seeking to protect their rights on the basis of such facts or evidence.

Article 495

(Added paragraph II by Law no. 8812, dated 17.5.2001, article 100)
(Amended by Law no. 10052, dated 29.12.2008, article 14)

Revision of decisions in circumstances provided in Items "b", "c", and "d" of Article 494 of this Code is permitted when those circumstances have been proven by an irrevocable penal decision.

Should criminal prosecution fail to commence or conclude due to reasons provided in Article 290 of the Code of Penal Procedures, or because the person that committed the forgery has not been identified, the verification of the aforementioned circumstances may be verified by filing a lawsuit to the Civil Court.

Article 496

(Amended by Law no. 38/2017, article 102)

The request for review may be filed within 30 days from the day that the party proves that has received notice for the cause of the review. In cases foreseen in Article 495, the time limit of 30 days begins from the day that the decision has received full force and effect.

Article 497
Submission of request

(Amended by Law no. 8812, dated 17.5.2001, article 101; Law no. 38/2017, article 103)

1. The request for review is presented before the court of first instance that rendered the decision, but when the case has been appealed to the higher courts, the competent court shall be the highest court that has adjudicated the case on the merits. The competent court for the examination of the request for review adjudicates according to the rules applicable at that instance of adjudication. The application must contain: the cause for requesting the review, the relevant evidence relating to one of the requirements of Article 494 of this Code, the day of discovery or of the certification of the circumstance or of the receiving of the documents.

2. The request is signed by the advocate given "power-of-attorney", and if the party demands, also by the party themselves.

3. The request, if submitted incomplete of or inconsistent with the above requirements, shall be returned by the court for completion. In case the request is not complete within a period of 10 days, the Court decided not to accept it.

Article 498
Examination of the request
(Amended by Law no. 8812, dated 17.5.2001, article 102; Law no. 38/2017, article 104)

1. When the request is made in outside the cases specified in Article 494 or where it is made by those who do not have this right, and, when it is manifestly unfounded, the court decides not to accept it.

2. When the request is considered by the Court of First Instance or the Court of Appeal and is accepted, the court decides the annulment of the decision in whole or in part and continues the adjudication of the case on its merits.

3. When the application is examined by the High Court and is accepted by it, the court decides the annulment of the decision in whole or in part and sends it for adjudication to the competent court, which retries with another judicial panel. If the cause of the review is not related to the need of the specification of new facts, the High Court, revokes its previous decision and decides again on the case, pursuant to its competence.

4. In cases defined by the letter "e" of Article 494 of this Code, the competent court annuls the second decision.

5. Against the decision of the court of first instance and that of appeal it is allowed appeal or recourse to the higher court, according to the general rules of appeal or recourse.

6. In case the application is reviewed by High Court, against its decisions appeals are not allowed.

Article 498/a
(Added by Law no. 8812, dated 17.5.2001, article 103; amended by Law no. 38/2017, article 105)

The retrial of the case from the competent court, is done according to the general rules.

Article 499
Preliminary review
(Repealed by Law no. 8812, dated 17.5.2001, article 104)

Article 500
Suspension of execution

Submission of the request for revision does not suspend the execution of the decision. But the court, on request by the party, may suspend the

execution of the decision when it estimates that there is danger that a heavy and irreparable damage may be caused.

Article 501
Taking the decision
(Repealed by law no. 8812, dated 17.5.2001, article 104)

Article 502
Objection of the decision
(Repealed by Law no. 8812, dated 17.5.2001, article 104)

TITLE IV

CHAPTER IV
OBJECTION BY A THIRD
(Repealed Articles 503-509 by Law no. 8812, dated 17.5.2001, article 104)

FOURTH PART
ENFORCED EXECUTION

TITLE ONE
GENERAL PROVISIONS

Article 510
Executive titles
(Amended letter 'd' by Law no. 8812, dated 17.5.2001, Article 105; letter 'd' amended by Law no. 9953, dated 14.7.2008, Article 1; letter 'a' amended by Law no. 10 052, dated 29.12.2008, Article 15)

Enforced execution can be made only on the basis of an executive title. Executive titles are:

a) civil final decisions of the court containing an obligation, decisions issued by them on securing the lawsuit as well as on temporary enforcement;

b) irrevocable penal decisions in the section dealing with property rights;

c) decisions of the arbitration courts of foreign countries that are empowered in accordance with the provisions of this Code;

ç) the decisions of an arbitration court in the Republic of Albania;

d) notary documents containing monetary obligations as well as documents for the award of bank loans or acts on the award of loans by non-banking financial institutions;

dh) bills of exchange, cheques, and order papers equivalent to them;

e) other documents according to specific laws, are executive titles and authorize the Bailiff to carry them out.

The Civil Chamber of the Supreme Court, in unifying decision No. 00-2024-5438 (191), dated 18.04.2024, has submitted for unification the following matter:

1. Does the electricity bill, specifically for the economic damage part, issued by the electricity distribution company pursuant to Law No. 9072, dated 22.05.2003 "On the Electricity Sector," as amended by Law No. 10362, dated 16.12.2010, and by the current Law No. 43/2015 "On the Electricity Sector," qualify as an executive title?

The Civil Chamber of the Supreme Court held that:

The specific legislation grants the electricity consumption bill the status of an executive title, which - under Article 510(e) of the Code of Civil Procedure - authorizes the creditor to pursue enforcement by requesting an execution order from the court, thereby avoiding the need to initiate a full judicial proceeding to enforce the claimed right.

As a legal notion, the executive title reflects the existence of a subjective material right that has been either violated or left unfulfilled. Accordingly, the executive title serves as the immediate and direct legal basis upon which the creditor may initiate compulsory execution, given that the individual in whose favor the title is issued - or who possesses it - is recognized as holding the right contained within it.

All acts explicitly recognized by law as enforceable with the coercive force of law constitute executive titles. According to legal doctrine and judicial practice, an executive title is defined as a final official act which acknowledges a full, precise, determinable, and unconditional obligation of one person or entity towards another.

Compulsory execution in this context is carried out not on the basis of a judicial decision, but rather on the basis of an act granted executive title status by law.

Furthermore, as a procedural safeguard, the invalidity of an executive title arises where there is a discrepancy between the factual reality and the legal reality presumed by the title. In accordance with this principle, the debtor - against whom the economic damage has been invoiced - is entitled to challenge the title's validity by filing a claim for invalidity, as provided under Article 609 of the Code of Civil Procedure.

Thus, the procedure for issuing an execution order - though grounded in a law that assigns executive title status to electricity bills - does not constitute a final or unchallengeable proceeding, as the debtor retains the right to a full judicial review of the claimed obligation, similar to that available in ordinary civil litigation.

In conclusion, the electricity bill issued for the economic damage portion by the electricity distribution company qualifies as an executive title under Albanian law.

The United Chambers of the Supreme Court, in their unifying decision No. 980, dated 29.09.2000, have addressed for legal unification the following matter:

1. On the basis of Article 17(1) of Law No. 8588, dated 15.03.2000 "On the Organization and Functioning of the Supreme Court of the Republic of Albania", the President of the Supreme Court has submitted a request to the United Chambers for the unification of judicial practice concerning the determination of the conditions and circumstances under which a notarial act is considered an executive title.

The United Chambers of the Supreme Court held that:

A bilateral legal act (such as a contract) - whether it be a bilateral agreement, like a contract of sale, or a unilateral agreement, such as a loan contract - does not qualify as an executive title. Executive titles are, by nature, judicial decisions, and only in exceptional cases, other acts expressly recognized by the Code of Civil Procedure or by special laws, which, due to their executive force, are treated in every respect as equivalent to pre-judicial court decisions.

For an act issued by a competent state authority, or drawn up and certified by a public official, to qualify as an executive title, under the conditions expressly established by law, it must include an obligation that is known, precisely determined, due, not subject to future conditions or deadlines, and above all, unconditional with respect to any other external circumstances or reciprocal obligations.

A notarial act, in order to constitute an executive title, must itself contain a unilateral and abstract legal act imposing an obligation to pay a specific sum of money. Furthermore, the obligation to pay stated in such an act cannot be contested on grounds that the obligation did not exist at the time of the drafting and signing of the act, nor on the basis that it requires evidentiary proof. It is presumed to be true.

An act for the payment of a monetary obligation, drawn up in the form of a notarial declaration and serving as an executive title, may be contested only on grounds of falsity, or challenged solely for the reasons set forth in Article 609 (1) of the Code of Civil Procedure.

A notarial act may also contain an obligation that arises from a subsequent contract, or more generally, from any prior legal relationship in which the debtor was a party. This new obligation - which does not necessarily extinguish any pre-existing obligations, as it is undertaken by the debtor subsequently and unconditionally - acquires an independent and autonomous legal existence.

The Constitutional Court, in decision no. 52, dated 05.12.2012, held that:

"31. In continuation of the foregoing arguments, the Court reiterates that Article 609 of the Code of Civil Procedure grants the debtor the right "to request, before the competent court of the place of execution, that it be declared that the executive title is null and void, or that the obligation does not exist, or exists to a lesser extent, or has been subsequently extinguished" (see Constitutional Court Decision No. 39, dated 16.10.2007). Consequently, the procedure for issuing an execution order - based on the law that grants electricity bills the status of executive titles - is not conclusive, since the debtor retains the right to bring a claim before the court pursuant to Article 609 of the Code of Civil Procedure, thereby ensuring a full and comprehensive judicial process, equivalent to that of any fundamental claim".

Furthermore, in its earlier decision no. 39, dated 16.10.2007, the Constitutional Court held that:

> "In this line of reasoning, the Constitutional Court finds that the procedure for issuing an execution order pursuant to the aforementioned provision does not constitute a final stage, but rather an intermediary phase that serves to prepare the parties in a banking credit relationship for the potential subsequent stage of reviewing the existence and precise amount of the obligation, as provided for in Article 609 of the Code of Civil Procedure. This procedural provision confers upon the debtor the right 'to request, before the competent court of the place of execution, that it be declared that the executive title is null and void, or that the obligation does not exist, or exists to a lesser extent, or has been subsequently extinguished".
>
> Given that the 'act for the granting of bank credit' is neither a judicial decision nor an arbitral award, an *a contrario* interpretation of the provision leads to the conclusion that the debtor may challenge the execution of the title even on the basis of facts that arose prior to the issuance of the execution order. Thus, the judicial procedure for examining the nullity of the executive title, as provided for in Article 609 of the Code of Civil Procedure, constitutes the final phase in resolving the dispute. Being identical in nature to the procedure applicable to the examination of any fundamental claim, it ensures that all procedural guarantees are afforded, enabling the debtor - if his rights have been infringed - to reassert them through a fair legal process".

The Constitutional Court, in decision no. 30/2022, which annulled the following passage for the reasons set forth below:

> The Court finds that the contested legal provision mandates the calculation of statutory interest during the process of mandatory execution of the executive title "act for the granting of bank credit" - that is, of a contract duly concluded between the parties. This implies that, in the course of calculating interest, statutory interest is assigned a specific monetary value, which will be collected upon completion of the mandatory execution from the debtor's assets. Accordingly, the Court considers that statutory interest constitutes private property within the meaning of Article 41 of the Constitution, and that the contested provision constitutes an interference with and a restriction upon this constitutional right.

The Court emphasized that, in a democratic state, the individual must be guaranteed the unimpeded and proportionate enjoyment of the right to property. Although this right enjoys strong constitutional protection, it may nevertheless be subject to limitations. However, any such limitations must be imposed in accordance with the criteria exhaustively enumerated in Article 17 of the Constitution, which include: the public interest, intervention by law only, and proportionality (see Constitutional Court Decisions No. 15, dated 22.06.2022; and No. 25, dated 28.04.2014). The Court notes that the analysis of these criteria is of particular importance when assessing restrictions on the right to property, as the guarantees of Article 17 are reaffirmed in Article 41 of the Constitution.

The Court observes that Article 2 of Law No. 48/2014 excludes from its scope obligations or payments arising from contracts with consumers. However, despite the content of Article 2 of that law, when issuing an execution order for the executive title "act for the granting of consumer bank credit," the court of ordinary jurisdiction, based on Article 511 of the Code of Civil Procedure, is required to calculate interest according to the commercial interest rate as provided in Article 5 of Law No. 48/2014. This results in the contested provision obligating the courts, in the procedure of issuing execution orders for executive titles concerning "consumer bank credit contracts", which enable the commencement of their mandatory execution, to apply the statutory interest regime of Law No. 48/2014.

In other words, the wording of the contested provision appears to apply the same legal framework for calculating interest to both "consumer bank credit" and "commercial bank credit" executive titles, despite the fact that these two debtor categories are distinct. Furthermore, the wording of the contested provision unconditionally delegates the calculation of statutory interest for both categories to the rules of Law No. 48/2014, even though that law explicitly excludes from its scope obligations arising from consumer contracts.

In doing so, the contested provision fails to meet the criterion of predictability, which is required by the principle of legal certainty in cases involving legislative interference with constitutional rights, including the right to property.

Summarizing the above considerations regarding the substantive aspect, the Court finds that Article 511, paragraph five, subparagraph "d" of the Code of Civil Procedure is not drafted in a qualitatively sufficient manner, as required by the constitutional standard that "limitations may be imposed only by law," set forth in Article 17 of the Constitution. Given that failure to meet even a single criterion renders the legal provision incompatible with the Constitution, the Court deems it unnecessary to proceed with an analysis of the proportionality criterion.

Article 511
Order of Execution

(Added last paragraph by Law no. 8812, dated 17.5.2001, article 106, Law no. 10052, dated 29.12.2008, article 16, Law no. 122/2013, article 38; amended by Law 114/2016, article 3; Law no. 38/2017, article 106)

The executive title shall be executed through the issuance of an execution order, which:

a) In the cases provided for by letters 'a' and 'b' of Article 510 of this Code, shall be issued by the court that issued the decision on the ordering provisions;

b) The decisions of the courts of foreign countries and foreign courts of arbitration, which are empowered to implement the provisions of this Code, the execution order shall be issued by the court that makes the recognition of the decision, in the ordering provisions.

The execution order shall not be issued for the decision on attachment of claim and fines imposed by the court, binding decisions on taking of evidence, the decision on the part ordering court costs, as well as the civil judgements of the court, the data on temporary execution, which are directly executed by the bailiff's office, after the notification of the decision.

The examination of the request for issuing the execution order is conducted by the judge without the presence of the parties.

The court issues the execution order based on the documents filed by the applicant.

The execution order contains:

a) identifying data of the debtor and creditor;

b) the origin of the obligation;

c) the concrete obligation deriving from the executive title until the moment of issuance of the execution order;

ç) when the executive title, for which an execution order is issued, is an act for granting bank credit or monetary obligations, the Court shall provide for the legal interest rates in accordance with the legislation in force that regulates late payments in contractual and the commercial obligations.

In its civil unifying decision No. 00-2023-4411(106), dated 02.03.2023, the Civil Chamber of the Supreme Court addressed for legal unification the following matters:

1. Is a request for the issuance of an execution order equivalent to a claim (lawsuit) under Article 600 of the Civil Code?
2. Pursuant to Articles 597, 598, 599, and 600 of the Civil Code, is the guarantor entitled to request the extinguishment of the guarantee?
3. Is the six-month period a preclusive time limit or a statute of limitations (Article 600 of the Civil Code)?
4. Pursuant to Articles 589, 590, and 591 of the Civil Code, is the status of the guarantor equivalent to that of the debtor? If so, at which stage may these statuses be considered equivalent?

Regarding the above, the Civil Chamber of the Supreme Court has determined the following:

> 44. The guarantee contract is commonly encountered in practice in the form of a bank contract or a contract entered into by a non-banking financial institution. Paragraph 1, letter (d) of Article 510 of the Code of Civil Procedure provides that:
>
> "*Compulsory enforcement may be carried out only on the basis of an executive title. Executive titles include: (…) (d) notarial acts containing monetary obligations, as well as acts granting bank loans or acts granting loans from non-banking financial institutions; (…)*"
>
> As a rule, all acts falling within this category qualify as executive titles, and an execution order is issued for them in accordance with Article 511 of the same Code. Following this line of reasoning, the Chamber finds that a guarantee contract qualifies as an executive

title only in cases where the legal requirements set out in Article 510 of the Code of Civil Procedure are fulfilled - specifically, paragraph 1, letter (d), in connection with acts for granting bank loans or loans from non-bank financial institutions.

Consequently, such cases involve an intersection of two types of proceedings: a proceeding challenging the guarantee contract as an executive title, and a proceeding challenging the same as a bilateral legal transaction.

69. The guarantee contract is most frequently encountered in practice as a bank contract or a contract with a non-banking financial institution, in which the banking or financial institution, in providing a loan to the debtor, also requires a guarantee from a third party - the guarantor. Within the meaning of letter (d), Article 510 of the Code of Civil Procedure, as a general rule, all acts of this category constitute executive titles, and an execution order is issued for them in accordance with Article 511 of the same Code.

70. In the case referenced above, in interpreting the spirit and purpose of the guarantee, as well as its subjective character, and viewing the claim in its material sense as a subjective right, it is necessary for the creditor to undertake concrete legal procedural actions against the guarantor. The creditor must demonstrate adequate interest and diligence in this regard.

The fact that the creditor undertakes procedural actions by submitting a request to the court for the issuance of an execution order on the guarantee contract - where such contract qualifies as an act for the granting of a bank loan or an act for the granting of a loan by a non-bank financial institution - presumes that the creditor seeks to enforce a subjective right, namely, the right to execute the obligation against the guarantor.

Therefore, in this context, the creditor's request for the issuance of an execution order is procedurally equivalent to a claim (lawsuit). This conclusion is further supported by the fact that in the provisions of the Code of Civil Procedure, the terms "claim" (padi) and "request" (kërkesë) are both used to denote a procedural act by which the interested party - whether plaintiff or applicant - invests the court with the task of protecting his subjective right. In this respect, both acts serve the same legal purpose.

The procedural mechanism through which such a guarantee is enforced is not regulated by Article 600 of the Civil Code, but rather by Article 515 of the Code of Civil Procedure. The executive title is enforced by the bailiff only upon the creditor's request, which chronologically follows the creditor's earlier request to the court for the issuance of the execution order on the guarantee agreement as an executive title.

The issuance of the execution order does not mark the commencement of execution of the executive title. It is a gracious (non-contentious) judicial proceeding that aims solely to verify the existence of the legal conditions for the validity of the executive title.

In light of the above, the Chamber concludes that, for acts containing monetary obligations that qualify as executive titles under Article 510 of the Code of Civil Procedure, the creditor's request for the issuance of an execution order is equivalent, in terms of legal effect, to a claim filed under Article 600 of the Civil Code.

96. For acts that qualify as executive titles, the procedural remedy available to the guarantor to request the extinguishment of the guarantee is a claim for "Invalidity of the executive title", insofar as it concerns the guarantor's obligation, in accordance with Article 609 of the Code of Civil Procedure.

Article 511/1

(Added by Law no. 122/2013, article 39; repealed by Law no. 38/2017, article 107)

Article 512
Appeal for non-issuance of execution order

Against the decision by which is refused the issuance of the execution order may be appealed in conformity with the rules on separate appeals.

Article 513
Execution order for separate things and persons

The execution order is issued in only one copy.

When separate properties must be handed over or when the execution title has been issued to the benefit or against several persons separate

execution orders may be issued making a note as which part of the title must be executed for each execution order.

Article 514
Issuance of duplicate of execution order

When the execution order is lost or disappears, on request by the creditor the court which has issued it may issue him a duplicate on the basis of the executive title.

The request is considered in court council after a copy of the request has been delivered to the debtor.

When the executive title itself is lost or disappears and it is not possible that its content be taken out of the acts of the organs which have issued it, the creditor may sue the debtor in conformity with the general rules.

Article 515
Commencement of execution
(Amended by Law no. 10052, dated 29.12.2008, article 17; amanded letter "c" by law 114/2016, article 4)

Executive order is enforced by the state or private judicial enforcement service through the enforcement bailiff, based on the request of the creditor.

The creditor apart from the request for execution should submit:

a) executive title (original or certified);

b) execution order (original);

c) payment of the fee in accordance with the first paragraph of article 525 of this Code;

ç) when appropriate, the power of attorney of the person representing the creditor party.

When the above-mentioned documents for the execution of executive order are not completed regularly the bailiff gives to the requester/claimant a 5-days deadline for filling in the deficiencies. When the requester/claimant does not fill in the deficiencies within the said deadline, the documentation is returned to the requester/claimant. When deficiencies are filled in within the deadline, the request for execution is considered registered from the day of its submission with the judicial bailiff.

The commencement of execution of the order of execution starts within 15 days from the date of submission of request of creditor.

Decision of the court for the measure of attachment of claim and fines imposed by the court are executed within five days from the day of execution.

The fee for execution of executive order is not paid in advance in cases foreseen by law or other normative acts.

Article 516
Territorial competence of the judicial bailiff
(Amended last sentence by Law no. 10052, dated 29.12.2008, article 18)

The request for the implementation of the execution orders is addressed to the bailiff of the place where the following are located:

a) the immovable or movable things or the money to which the execution is addressed;

b) place of abode of the third person obligated when the execution is addressed to the credit that the debtor has taken from that person;

c) the place of execution of the obligation for the performance or non-performance of a certain action.

When the bailiff assesses that he does not have the authority to execute the request, he sends it to the competent bailiff, after seizing the thing or the credit of the debtor.

Conflicts on competence are not permitted, but the judicial bailiff has the right to present his noncompetence to the court of the district where he operates, which considers it in court council. Separate appeal is permitted against the decision. This article does not apply to persons, judicial bailiffs who exercise the public activity of judicial enforcement service organised on private basis.

Article 516/a
(Added by Law no. 10052, dated 29.12.2008, article 19)

In the moment of commencement of execution procedure, the judicial bailiff based on article 515 of this law, should register with the central register of Ministry of Justice every request. Every judicial bailiff is obliged to become aware of the data of the register.

If upon the commencement of the procedure having as object "execution of pecuniary obligations", the judicial bailiff observes from the data received by the central register that other creditors are under execution procedure against the same debtor with the same object, he will suspend

the commenced procedure and address his creditor to the judicial bailiff who has previously registered the request for execution.

In such case, the judicial bailiff who has been the first to register the request proceeds with the execution procedure based on article 534 and following articles of this Code.

Upon the suspension of the execution procedure, the fee for the execution of execution order and the documentation are returned to the creditor.

This article does not apply when the state is the debtor.

Article 517
Notice for voluntary execution

(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 107; Amended by Law no. 10052, dated 29.12.2008, Article 20, Law no. 122/2013, article 40; Law 114/2016, article 5)

At the commencement of the execution of the decision, the Bailiff issues the debtor with a notice of voluntary execution of the decision contained within the execution order, designating for this purpose, a timeframe of five days when the subject of the decision involves a salary or an order for maintenance and a timeframe of ten days for all other cases.

The debtor, after received the notice for voluntary execution, is obliged to declare in written form his property status and also objects or credit that third persons owe to him, if he is requested to do so by the judicial bailiff.

Upon a request of the debtor, the first level court of the execution place, in special cases, taking into consideration the financial situation of the debtor or other circumstances of the case, and after hearing the creditor, may postpone the time limit of execution of the obligation in cash or may divide such an obligation in instalments, except when this obligation arises due to a bank loan. The Decision is issued in a hearing, within 20 (twenty) days from the filing of the request and a special appeal may be lodged against it.

The judicial bailiff performs announcements and notifications, by applying the provisions of Part I, Title VI, Chapter IV, "Notices" of this Code.

Article 518
Content of notice

Notice must contain a summary of the order of execution, the place and address of the creditor and the warning made to the debtor that the

enforced execution shall start if the execution is not made voluntarily by him within the time limit defined in the notice.

In case the debtor dies after the execution of the title but before the necessary actions for the execution are completed, the bailiff, before proceeding with his actions, must send to the heirs of the deceased, when they are known, a new notice for the obligation contained in the execution order to be executed voluntarily by them.

Article 519
Commencement of enforced execution

Enforced execution cannot start before the time limits provided in article 517 of this Code have expired, unless the danger exists that with the expiry of the time limit the execution shall be made impossible. In such a case the bailiff may start immediately with the enforced execution.

Article 520
Effects of execution order against heirs

The order of execution against the debtor who leaves inheritance is executed on the property of his heirs, but within the amount of the property inherited by them from the debtor leaving the inheritance.

Article 521
Execution against third party
(Amended by Law no. 8812, dated 17.5.2001, article 108)

The order of execution against the debtor may also be executed against a third person who, with the purpose of securing the obligation, has mortgaged an item he owns, when the creditor requests execution on such an item.

Article 522
Execution against debtor of unknown residence
(Amended by Law no. 8812, dated 17.5.2001, article 109, Law no. 10052, dated 29.12.2008, article 21)

When the domicile of the debtor is unknown, the First Instance Court of the district where the execution is to take place, upon the request of the Bailiff and after attaining the necessary evidence on the situation, within 10 days from the date of submission of the request by the judicial bailiff, assigns the debtor a representative to initially be paid by the creditor in accordance with Article 525 of this Code.

Article 523
Obligation to cooperate
(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 110, Law no. 10052, dated 29.12.2008, article 22)

When for the enforced execution it is necessary to open the place of abode or any other building of the debtor in absence of him or another adult family member of the debtor in order to search objects within, a representative of the local government is obliged to be present at request of the judicial bailiff. In any event, the judicial bailiff requires the participation of two other witnesses.

In case it is necessary, Order Police, at request of the judicial bailiff, is obliged to support him during execution procedures.

When for the enforced execution it is necessary collapse the object, release the land, suspend works, the Construction Inspectorate near Local Government and National Inspectorate, at request of judicial bailiff, are obliged to support the judicial bailiff during execution procedures.

Judicial bailiff shall ask for assistance of the psychologist when the latter is bound by law to cooperate, in execution of executive titles with the object "visitation and child custody".

Article 524
Minutes of the Bailiff

For each action undertaken, the bailiff is obliged to keep minutes in which are mentioned the day and place of the performance of the action, requests and statements made by the parties, things seized, the proceeds and the cost incurred for the execution.

Article 525
Cost of execution
(Amended by Law no. 10052, dated 29.12.2008, article 23; Law 114/2016, article 6)

The fixed fees set for executing the executive order are initially paid by the creditor and, upon completion of the execution procedure, are charged to the debtor. Other expenses, during the execution procedure, are paid by the party that caused them.

The rate of the success fee, with the exception of instances when it is not applicable, is determined by agreement between the creditor and the bailiff, in accordance to the legislation governing the bailiff service.

Article 526
Execution against a foreign person

The enforced execution against a foreign public person may be affected only on permit by the Minister of Justice.

Article 526/a
Scope of application
(Added by Law no. 8535, dated 18.10.1999, article 1)

The general dispositions for the mandatory execution are implemented for all kinds of executive titles.

By law, there are specific regulations for the mandatory execution of determined executive titles in accordance with the requests of Articles 510, 511, 516, 520, 521, 523, 524, 545, 561 and 562 of this Code, even if there are different scopes of application of mandatory execution as provided in this Code.

TITLE II
EXECUTION IN SPECIAL DOMAINS

CHAPTER I
EXECUTION OF OBLIGATIONS IN MONEY AGAINST NATURAL AND LEGAL PERSONS

GENERAL PROVISIONS

Article 527
Placement on Seizure

When the execution of an obligation in money is requested, the bailiff starts the enforced execution on the expiry of the time limit in the execution notice (article 517) by placing on seizure the credits of the debtor and his movable and immovable things to the measure which shall be necessary for the fulfilment of the obligation.

Article 528

(Added last sentence by Law no. 10052, dated 29.12.2008, article 24)

Upon request of the debtor seizure may be placed also on another property of his other than that indicated by the creditor when the bailiff estimates that it fulfils the request of the creditor. At request of the debtor, the seizure may be placed, apart from the properties under pledge and mortgage, even over properties other than those indicated by the creditor, when the judicial bailiff deems that it fulfils the creditor's request.

Article 529

Things on which seizure cannot be placed

(Added point 8 by Law no. 10052, dated 29.12.2008, article 25)

Exempt from the seizure of the property of the debtor are:

1. Things of personal use of the debtor and his family such as: clothing, sheets and covers, furniture to the degree they are necessary for their living.

2. Food and fuel which are necessary to the debtor and his family for up to three months.

3. Decorations and souvenirs, letters, documents of the family ad professional books.

4. Books, musical instruments, means of art which are necessary for the scientific and artistic activity of the debtor and his family.

5. For persons earning their livelihood through agricultural and livestock raising activity, up to 3 (three) thousand square meters of land, two animals for tilling land, one cow, 6 sheep or 6 goats, seeds for the future planting as well as the food for those animals for three months.

6. On assistance given to mothers with many children or lone mothers, on the retirement, invalidity or family pensions or on the study fellowship unless the obligation is for sustenance. In this case cannot be seized more than 1/2 of the amount of pension or fellowship.

7. Natural fruits one month before they are ripe.

8. Necessary objects of work for ensuring a living.

Article 530

Extension of seizure to income from insurance

If the seized things are insured, seizure extends also on income pertaining to them from insurance.

Article 531
Obligations of debtor after placement of seizure

From the moment the seizure is placed the debtor has no right to possess the movable or immovable thing or the credit or to change, damage or disappear the thing otherwise he is responsible according to the provisions of the Penal Code. This obligation extends also to persons who are in possession of the thing of the debtor.

Article 532
Bank account of bailiff's office and judicial bailiff
(Amended by Law no. 10052, dated 29.12.2008, article 26)

The amounts ensuing on the occasion of the execution against the debtor, against the third person who owes to the debtor, against the buyer of the sold thing in the shops of free sale or at auction are sent to the bank at the Bank account of bailiff's office or judicial bailiff.

Article 533
Seizure on salary of debtor
(Amended by Law no. 10052, dated 29.12.2008, article 27)

After reducing the contribution for social insurance and income tax the judicial bailiff seizes the salary of the debtor, without falling below the minimum living wage determined according to the legal and subordinate legal acts in force.

Article 534
Participation of other creditors

Other creditors of the same debtor may participate at any stage of execution until the bailiff has not prepared the plan for the division of the proceeds.

Participation of other creditors in execution is made on basis of their written request to which is attached the execution order or a decision of the bailiff that the execution order is attached to another case which is under execution.

Article 535

The creditor who participates in execution together with other creditors has the same rights with the creditor, who was the first to place seizure on the things or credits of the debtor, except when legal causes of preference exist.

Execution actions, performed before the creditor participates together with the other creditors, create rights also for them.

Article 536

The state is always called a creditor who participates together with other creditors for the obligation that the same debtor has towards the state and which result from taxes and other credits, whose amount has been notified to the bailiff before the division of the other amounts is made. For this purpose, the bailiff notifies the relevant finance section on any execution initiated by him and on any division made by him.

Article 537
Plan for division of proceeds
(Amended by Law no. 8812, dated 17.5.2001, article 112)

When amounts from the execution are not sufficient to pay all creditors, the Bailiff shall prepare a division plan, firstly by setting aside amounts required for the credits paid according to preference and, from the amount remaining; the Bailiff shall pay the other credits in proportion to their amount.

Article 538

The bailiff notifies the debtor and the creditors on the preparation of the plan for the division of the proceeds and calls them on a date determined by him.

If within 5 days from the day the bailiff presents the plan for the division no appeal is made, the decision is considered final and the bailiff gives to each creditor the amount due.

Article 539
Appeal against the plan for the division of proceeds
(Amended by Law no. 8812, dated 17.5.2001, article 126)

In the case that an appeal is filed against the plan of division, the case together with the appeal is sent to the First Instance Court, where a decision shall be reached in court session involving the attendance of the debtor and the creditors. A separate appeal may be filed at the Court of Appeal against the decision of the court regarding the division of the proceeds.

CHAPTER II
EXECUTION ON MOVABLE THINGS

Article 540
Making inventory

(Added last sentence by Law no. 10052, dated 29.12.2008, article 28)

Seizure of debtor's movable things is made by making an inventory of them by the bailiff. The judicial bailiff sequestrates movable property by placing a label of the enforcement service

Article 541

The inventory includes only the things which are in the house of the debtor as well as those which are in another building which is jointly of the debtor and of third persons, except when it arises that they belong to another person.

Minutes are held for the inventory.

Article 542
Content of inventory record

(Added letter "c" by Law no. 8812, dated 17.5.2001, article 112)

The record of inventory must contain:

a) the document for the order of execution of seizure;

b) the forename, father's name and family name of Bailiff, debtor, creditor and other persons present during the inventory;

c) the location of the inventory and the time of its completion;

ç) claims of third persons in relation to items documented in the inventory;

d) detailed description of the items including an estimation of their value;

dh) the guardian of the items;

e) signatures of those persons participating in the preparation of the inventory.

Article 543

(Amended by Law no. 8812, dated 17.5.2001, article 113)

The inventory shall be prepared in the presence of the debtor. In the absence of the debtor, the inventory shall be prepared in the presence of another adult person of the family and, when no such person is present, in the presence of a representative of the local authority. In any case the inventory shall be prepared in the presence of two witnesses as well.

Article 544
Appraisal of inventoried things

The inventoried things are appraised by the bailiff on basis of appraisals by experts, on basis of market prices, deducting the appropriate percentage for wear and tear or oldness.

Article 545
Obligations of debtor for things left in custody

The inventoried things may be left in custody to the debtor, who has the right also to use them on condition not to diminish their value. When the debtor refuses to accept them in custody the bailiff appoints another person for this, determining a fee for him.

The debtor or the third person, to whom are left in custody the inventoried things, must render account on the income and expenditure made for the thing. They are responsible in conformity with the provisions of the Penal Code for their possession, damage or destruction.

Article 546
Execution on items of joint property

(Amended by Law no. 8812, dated 17.5.2001, article 114)

When execution is carried out on items that are joint property of the debtor and other persons, the Bailiff, after preparing the inventory of the entire joint property, presents a request to the relevant court of the place of execution, which determines and divides the part belonging to the debtor, in accordance with the regulations provided in articles 369-374 of this Code. The execution of this part is then carried out by the Bailiff.

Article 547
Invalidity of possession after placement on seizure

Any possession of the movable thing by the debtor after the seizure is

invalid against the creditors who have requested the execution, except when by possession the thing has passed in ownership to another who has been in good faith article 166 of the Civil Code.

Article 548
Seizure of valuables

Precious things such as gold, silver, platinum and the metals of platinum group in bars, pieces, coins and articles made of them, precious stones, pearls, and articles made of them as well as foreign currency, documents of payment in foreign currency such as bills of exchange, cheques, bills and other papers of such nature as well as foreign titles with value as shares, bonds and the relevant coupons are given in custody to a bank.

Article 549
Procedure of sale

After placing the seizure, the bailiff notifies the debtor that the seized things shall be sold if he does not execute the obligation within five days.

Article 550

The sale of things is made by auction or in shops of free sale, while the precious things (article 548) deposited in the bank are sold to it and their counter value is received by the bailiff on basis of the official rate at the time of payment.

Article 551
(Repealed by Law no. 10052, dated 29.12.2008, article 29)

Article 552
Determination of price
(Amended by Law no. 10052, dated 29.12.2008, article 30)

The price of the seized object is determined by the bailiff in cooperation with the creditor and debtor. When there are contradictions between them an expert is called.

Article 553
Free sale of the object
(Added paragraph I by Law no. 8812, dated 17.5.2001, article 115)
(Amended by Law no. 10052, dated 29.12.2008, article 31)

The Bailiff sends the items for sale in free sell shops. The amount of

compensation on the sale is performed in agreement between the Bailiff and the salesperson. The amount of compensation shall be decided upon depending on the cost of the sale of the seized item.

If within two months after the object is not sold in shops of free sale, the judicial bailiff with the consent of the parties decided whether to proceed with free sale even for 30 other days or to put it in auction procedure.

Article 554
Auction
(Amended by Law no. 8812, dated 17.5.2001, article 116, Law no. 10052, dated 29.12.2008, article 32)

The judiciary bailiff, after informing the parties that the item due to its nature or state may not be accepted by free sale shops, organizes the sale of the item by auction according to the price determined in article 552 of this Code.

Article 555
(Added first sentence by Law no. 10052, dated 29.12.2008, article 33)

Initial price of the first auction is 80 percent of the price set according to article 552 of this law.

When the thing is sold by auction the bailiff places in his office, in the place where the thing is and, in the place, designated for the auction, an announcement which must indicate the price at which sale at auction shall start, the place, day and time of the auction.

The auction cannot be made before the passing of five days from the announcement.

Article 556

The sale by auction of the thing is made on the day designated in the announcement and ends at the end of the official working hours of that day.

Buyer is called the bidder who has given the highest price. The buyer must pay the price immediately.

Persons indicated in article 709 of the Civil Code cannot participate in the auction. Minutes are held for all actions of sale at auction.

Article 557
Second auction
(Amended by Law no. 10052, dated 29.12.2008, article 34)

In case no bidder is present at the first auction, then, after ten days from its end, the judicial bailiff sets the new price which is not less than 30% of the price of the first auction and determines a second auction for the sale of the object.

In case no bidder is present in the second auction, the bailiff proposes first to the creditor to take the object against the credit at the price of the second auction. If creditor refuses to take the object, the bailiff removes the seizure over this object by returning that to the debtor and proceeds with the enforcement procedures over his other properties.

Article 558
Order of sale of things at auction

The debtor has the right to determine the order in which things shall be sold at auction. If from the sale of one or more things result proceeds, which suffice to pay the credit of the creditor and other expenses related to the credit, the auction ends and the other things are not sold.

Article 559
Passage of ownership of sold thing

The buyer of the things sold at the free sale shop or at auction becomes the owner of the thing even if the thing were not owned by the debtor.

No appeal can be made against the sale and its validity cannot be objected, except in the case provided in the third paragraph of article 556 of this Code.

CHAPTER III
EXECUTION ON IMMOVABLE THINGS, ON MEANS OF NAVIGATION AND AVIATION

Article 560
Placement of seizure
(Amended by Law no. 10052, dated 29.12.2008, article 35)

The execution of the decision of the court or of other executive titles on

immovable things of the debtor is made by placing seizure on them.

Seizure is placed by its registration in the office of the register of immovable property of the act of the bailiff in which are noted the kind, nature and at least three borders of the immovable thing, its location as well as the mortgages and real rights which may have been held on it. Act of judicial bailiff is registered with by the immovable property registration office within 10 days from the date of its submission.

A copy of the act of the bailiff is communicated to the debtor.

Article 561
Seizure on means of navigation

When a ship is seized, the name and nationality of the owner of the ship, the description and its capacity as well as other data related to its registration are mentioned in the respective minutes. The copy of the minutes of seizure, for Albanian as well as for foreign ships, is given to the person who keeps the maritime register of the ship as well as to the director of the port where seizure is placed, who notifies immediately the owner of the ship.

Seizure prohibits the sailing of the ship.

Article 562
Seizure on means of flying

When a means of flying is seized, the name and nationality of the owner, identification signs of the means, place of registration, capacity and other data of such nature are mentioned in the respective minutes.

The copy of the minutes of seizure is given to the commander of the airport where seizure is made.

Seizure prohibits the flying of the means. When the flying means is a foreign one, the command of the airport notifies immediately the office where the flying means is registered.

Article 563
Assessment of right of ownership of debtor

Before placing the seizure, the bailiff is assured if the immovable thing is in ownership of the debtor. For this, ownership documents must be presented to the bailiff or he himself requests information from the office of registration of immovable property and, in their absence, from the financial organs of local power.

Article 564
Appraisal of means seized
(Amended by Law no. 10052, dated 29.12.2008, article 36; Law no. 122/2013, Article 41; Law 114/2016, article 7)

If the creditor and the debtor, within a week, fail to reach an agreement on the value of the thing, on which the seizure is placed, the immovable thing, on which the sequester is placed, is evaluated by decision of the judicial bailiff, within 15 days, in the technical assistance of a licensed expert in the field.

In determining the value of the thing, the judicial bailiff is based on the methodology determined by the decision of the Council of Ministers.

The judicial bailiff, within 10 days from the date of the assignment of the value, notifies the creditor and the debtor of the determined price. Against the decision of the judicial bailiff the parties may appeal, in accordance to the rules foreseen in Article 610 of this Code.

Article 565
Obligations of the debtor on thing left in custody

The thing seized is left in custody to the debtor until it is sold, the debtor being obligated to take care of it as if it was his own thing.

If the debtor does not take due care for the thing left in custody, the bailiff appoints another person for the custody, determining a fee for him. The appointing and the determination of the fee are made in agreement between the bailiff and the other person. The fee shall be drawn out of the value of the thing after its sale.

The debtor or the other person to whom the seized thing is left in custody must account for the income realized and the expenses made for the thing. They are responsible in conformity with article 320 of the Penal Code for action which constitutes an obstacle for the execution of the court decision.

Article 566
Invalidity of legal actions of debtor on seized things

Any action of the debtor which constitutes possession of the immovable thing after the registration of seizure in the office of the register of immovable property is invalid against the creditors who have requested the execution.

Article 567
Procedure of selling by auction

After the placing of seizure, the bailiff sends to the debtor a notice that the thing shall be sold if he does not fulfil his obligation within 10 days from the notification.

On the expiry of the above time limit the bailiff announces the sale of the thing by auction.

Article 568
(Amended by Law no. 10052, dated 29.12.2008, article 37, added words at the end of the first paragraph by Law no. 122/2013, article 42)

The announcement for sale by auction is placed at the office of the bailiff and at the place where the immovable object is, court, commune, municipality, municipality unit and in other public place or places which are deemed appropriate, as well as for 5 days in turn in two national newspapers of the highest printing. The announcement must contain the first name, father's name and family name of the owner of the object, if there is a mortgage on it and for what amount of money, the price of the object at which the auction shall start, the place, day when the sale by auction shall end. The sale cannot take place before the passing of 15 days from the announcement of the auction.

The creditors who have mortgage must be notified on the announcement for sale by auction. Initial auction price is 80% of the price set according to article 564 of this Law.

Article 569
(Amended by Law no. 10052, dated 29.12.2008, article 38)

The sale of the thing is made in the office of the bailiff or in any other public place, if appropriate for the holding of the auction. It continues for 15 days and ends at the end of the official working hours of the last day which is indicated in the announcement for the sale by auction.

Article 570

Before the start of auction, each bidder who participates in it must deposit as guarantee with the office of the bailiff an amount of money equal to 10% of the price of the thing designated in the announcement. The creditor does not leave any guarantee in case his credit surpasses the amount of guarantee.

Article 571
Minutes of auction procedure

Minutes are held for the auction in which the bidders alongside their signature note the price they give for the thing irrespective of the price given before. When the bidder acts through a representative, the power of attorney must be presented.

Article 572
Invalidity of sale by auction

The debtor, his legal representative, the bailiff as well as the other persons indicated in article 709 of the Civil Code do not have the right to participate at auction.

When the thing is bought by a person who does not have the right to participate at auction, the sale is invalid. In this case, the amount left as guarantee by the buyer goes to the benefit of the state and the thing, on request by any creditor, may be sold again by auction, acting in conformity with the rules determined in this chapter.

Article 573
Announcement of winner of auction
(Amended last paragraph by Law no. 10052, dated 29.12.2008, article 39)

At the end of the auction, the bailiff announces the winner. Buyer is the bidder who has given the highest price.

Ownership to the thing passes on to the buyer only after he has paid the whole price, deducting from it the amount left as guarantee.

The guarantees left by other persons who participated at the auction are returned to them immediately after the end of the auction.

Detailed rules on the holding of the auction are determined by the instruction of Council of Ministers.

Article 574
Time limit of payment of price of purchase
(Amended by Law no. 10052, dated 29.12.2008, article 40)

The buyer must pay the price of the thing within 15 days from the end of the auction.

On payment of the price of the thing and the tax on the acts of sale of the thing the bailiff issues the decision for the transfer of the thing in

ownership of the buyer. From that day the buyer gains all the rights that the debtor had on the thing.

Article 575
Giving possession of purchased thing
(Amended by Law no. 10052, dated 29.12.2008, article 41)

The buyer is given possession of the object by the bailiff within 10 days from the date of the payment of the prize of the item, against the debtor or the person to whom it is left in custody as well as against any other person who has the object in possession. The third person may be defended against the removal of the thing from possession only by means of the lawsuit on recognizing the right of ownership on the thing.

Article 576
Non-refund of amount left as guarantee

The buyer who does not pay the price within the time limit provided in article 574 loses the right of being returned the amount left as guarantee, which goes to the benefit of the state, and a new auction is held for the sale of the thing in conformity with the rules provided in this chapter.

Article 577
Repetition of auction
(Amended paragraph I by Law no. 10052, dated 29.12.2008, article 42; Law no. 122/2013, article 43; amended paragraph II by law 114/2016, article 8)

In the event that no bidder is presented at the first auction, then, within 10 days from its conclusion, the judicial bailiff determines a new price of the thing, not lower than 30 per cent of the initial price determined at the first auction. The second auction for selling the thing is made following the rules specified by article 568 of this Code and is conducted 30 days starting from the next day of the date when the new price was determined.

In the event that no bidder is presented at the second auction, then, within 10 days of its conclusion, the judicial bailiff determines a new price of the thing, not lower than 10 percent of the price determined by the judicial bailiff at the auction second.

The third auction for the sale of the thing is done according to the rules set out in the first paragraph of Article 568 of this Code, and is conducted no later than 30 days from the next day of the date when the new price was determined.

In the event that no bidder is presented at the third auction, the judicial

bailiff proposes first to the creditor, that against the loan, to receive the thing at the price of the third auction. In case the creditor, within 30 days of the receipt of the proposal refuses to receive the thing, the judicial bailiff removes the sequester on the sequestered thing and continues the execution procedures on the other assets of the debtor.

When the creditors that request to take the thing against credit are several the bailiff declares buyer the creditor who within 3 days from the suggestion gives a higher price than the one designated for the new auction.

Article 578
Execution on an immovable item of joint ownership
(Amended paragraph I by Law no. 8812, dated 17.5.2001, article 117)

When the execution of an immovable item of joint ownership is carried out, for the scope of the obligation of one of the co-owners' seizure is placed upon such item. The Bailiff files a request to the court to divide the part belonging to the debtor who is also co-owner and the execution is performed on this part. The item can be sold in its entirety following the prior consent of the other co-owners. Consent must be provided by the provision of a notary act. When the item is jointly owned and all of the co-owners are debtors, the seizure and sale of the item is conducted in the same way as that of a single debtor.

Article 579
Difference between obligation and price of thing

When the proceeds realized from the sale by auction are greater than the amount of credit of the creditor or creditors, the difference is returned to the debtor after deducting expenses made for the custody of the thing or for holding the auction.

Article 580
Objection to ownership of thing sold at auction and to actions of bailiff

The sale of the immovable thing by auction does not prohibit the third person who claims to be the its owner to claim the thing by lawsuit.

Against the sale by auction may be made an appeal to the court in the form of objection to the bailiff's action. The validity of the sale by auction may be objected by lawsuit in conformity with the general rules only in the case provided in article 556 of this Code.

CHAPTER IV
EXECUTION ON CREDITS OF DEBTOR AND ON THINGS THAT THIRD PERSONS OWE TO THE DEBTOR

Article 581
Declaration of debtor's property
(Amended by Law no. 10052, dated 29.12.2008, article 43)

Prior to placing seizure, judicial bailiff is ensured about the existence of credits of debtor and objects that third persons owe to him.

To this end, the judicial bailiff notifies in writing the third person and the debtor. On receiving the notice, the debtor should declare to the judicial bailiff that information submitted over his/her properties or property under possession of third persons is accurate and complete. On receiving the seizure notice, the third person is prohibited from delivering to the debtor the credit and his things. In case the debtor is a legal person, the declaration of property may be done by a member of the steering body, who according to the law or statute, has the right of representation of third parties or in case of distribution or insolvency procedures of legal person it may be done by the liquidator or insolvency administrator.

Article 320 of the Criminal Code shall apply against a debtor who makes a false declaration.

Article 582

Before placing seizure on these things, the bailiff is assured on the existence of credits of the debtor and of the things which third persons owe him, on basis of documents and other data secured mainly by the bailiff.

Article 583
Objection by third person
(Amended paragraph II, III by Law no. 8812, dated 17.5.2001, article 118)

The third person is obligated to respond to the Bailiff within five days of receiving the notice of seizure if:

a) the third person accepts that the seized credit or items belong to the debtor and if he is willing to pay off the credit or to deliver the items;

b) other people have claims over the credit or items;

c) seizure is put on the credit and items according to another execution order as well.

The third person, even in the case of a governmental institution or venture, the relevant person, which fail to reply within the aforementioned timeframe, shall be fined by the Bailiff between 1,000 to 50,000 ALL. This consequence must be stated in the notice of the seizure.

An appeal may be filed against the decision of the Bailiff within five days from the date of notification.

Article 584

When the third person in his answer does not object that the credit or the things belong to the debtor he is obligated to deliver them to the bailiff who acts in conformity with the above-mentioned rules.

Article 585

When the third person in his answer objects that the credit or the things belong to the debtor, execution on them cannot continue and the creditor must file a lawsuit to prove that the credit or the things, that the third person has, belong to his debtor.

Article 586
Credit secured by pawn or mortgage

When the seized credit is secured by pawn, the person who holds the thing on pawn is obligated not to deliver that thing to anyone without order from the bailiff.

When the seized credit is secured by mortgage, a note on the placing of seizure must be made into the registers of the office of registration of immovable property.

Article 587
Seizure on other remuneration

Seizure on the salary extends not only on the salary indicated in the seizure notice but also on any other remuneration that the debtor receives from the same work or from another work, at the same natural or juridical person, state or private.

When the debtor changes place of work, the notice of seizure is send to the new place of work by the place of work he worked before and is

considered as sent by the bailiff. In this case, as well as in the case the debtor is dismissed from work, the bailiff must be notified within five days.

Article 588
Responsibility for non-execution of Bailiff's order
(Amended paragraph I, added paragraph II by Law no. 8812, dated 17.5.2001, article 119)

When the person in charge, at the debtor's workplace, does not retain the ordered amounts from the debtor's salary in accordance with the notice of the Bailiff, or does not notify the Bailiff of the transfer of the debtor to another workplace or of his/her dismissal, the person in charge shall be charged a fine up to 30,000 ALL by the Bailiff.

An appeal can be filed with the court against the decision of the Bailiff within five days of the announcement.

The fined person has the right to request exemption from punishment in accordance with the regulations provided in Article 169 of this Code.

CHAPTER V
EXECUTION OF OBLIGATIONS IN MONEY TOWARDS BUDGETARY INSTITUTIONS

Article 589
Execution of financial obligations to the state
(Amended by Law no. 8812, dated 17.5.2001, article 120, amended last paragraph by Law no. 10052, dated 29.12.2008, article 44)

The execution of financial obligations to budgetary institutions is carried out only into their relevant bank account, into the credits they have with third parties and in their absence, into the account of the treasury. Enforced execution on the movable or immovable property of a budgetary institution is not permitted.

Should the budgetary institution's bank account be devoid of money and lacking credit with third parties or with the treasury, shall be requested from the relevant superior financial body to designate the necessary fund and the budget chapter of the subject that shall fulfil the obligation, or to allocate special financing from the State Budget.

In cases where the obligation of the state is payable in precious metals,

the execution shall be carried out following prior consent of the Minister of Finances.

The Council of Ministers issues the necessary instruction for the execution of the pecuniary obligations of the budgetary institutions in the account of the treasury.

Article 590

Enforced execution towards determined credits of a foreign creditor is made only when there is no prohibition or limitation by separate law or by international state agreement.

Article 591
Execution of financial obligations to the state
(Repealed by Law no. 8812, dated 17.5.2001, article 121)

Article 592
Execution in case juridical person is dissolved or goes bankrupt

When the obligation rests on a juridical person which is dissolved or goes bankrupt, execution is made through the organ which accomplishes such actions, in conformity with the separate provisions. When the obligation of the state is in precious metals, the execution is made with the preliminary consent of the minister of Finance.

CHAPTER VI
EXECUTION ON AMOUNTS IN BANK ACCOUNTS

Article 593
Obligations of banks to inform the Bailiff
(Amended paragraph II by Law no. 8812, dated 17.5.2001, article 122, Law no. 10052, dated 29.12.2008, article 45)

The Bailiff notifies all public and private banks, which are obliged to inform the relevant Bailiff of accounts, deposits or credits in the name of the debtor; otherwise they shall be accountable in accordance with the provisions detailed in the Penal Code.

Article 594
Placement of seizure on account of debtor

On receiving the execution order the bank seizes the account, deposits and credits of the debtor to the measure necessary for the execution of the obligation, without suspending the payment of credits which in conformity with article 605 of the Civil Code are paid by preference towards the credit on which seizure is placed.

Article 595
(Amended by Law no. 10 052, dated 29.12.2008, Article 26)

The amounts taken from the account, deposits and credits of the debtor pass on into the account of the creditor in the same bank or in another bank or, when there are no such, into the Bank account of bailiff's office or judicial bailiff.

Article 596
(Repealed by Law no. 10052, dated 29.12.2008, article 46)

Article 597
Respecting the order of preference
(Amended by Law no. 8812, dated 17.5.2001, article 123)

When the amount in accounts, deposits or credits is not sufficient to liquidate obligations presented for execution, the Bailiff respects the order of preference defined in Article 605 of the Civil Code.

Article 598
Sanctions and appeal against them

When the bailiff has ground to doubt that the bank inappropriately does not execute the obligation entirely or partially, violates the time limits of executions or does not respect the order of preference, he has the right to verify in place the bank documentation in the presence of the person assigned by the management organ of the bank and keeps the relevant minutes.

When breaches or incorrectness are assessed, the bailiff determines in the minute's mandatory actions and time limits for the bank.

For breaches and incorrectness, the bailiff has the right to apply the measures provided in article 588 of this Code, appropriately against the bank employee or against its management organ, that has ordered incorrect actions.

Article 599

(Amended by Law no. 8812, dated 17.5.2001, article 126)

A separate appeal can be filed with the First Instance court against the decision of punishment by fine within five days of receiving the notice of punishment.

Article 600
Bank issues necessary instructions

The Bank of Albania issues the necessary instructions on the manner of applying the above-mentioned provisions, mandatory for the entire banking system.

CHAPTER VII
EXECUTION OF OBLIGATION TO RELINQUISH A DEFINITE THING

Article 601
Placement in possession of movable thing

When the movable thing, on which decision is issued, has not been delivered voluntarily by the debtor within the time limit designated in the notice of the bailiff, it is taken from him by enforcement and is delivered to the creditor.

When the thing is not by the debtor or is destroyed, or only a part of it is by the debtor, the value of the thing or of the missing part is taken from the debtor. When the order of execution does not indicate the value of the thing, it is designated by the court of the place of execution, after hearing the parties and if necessary, after questioning witnesses or experts. Separate appeal may be made against the decision of the court.

Article 601/a

(Added by Law no. 10052, dated 29.12.2008, article 47)

Movable objects located within an immovable object, placed under possession, according to article 602 of this Code should be immediately removed from the responsibility of the bailiff and delivered to the debtor or his family members. In case the debtor or his family members are not present during release, the bailiff may store the movable properties in:

a) the free premise, upon agreement with the creditor, for a time period of two months;

b) the premises, disposed by the enforcement service for the storage of objects for a time period of two months;

c) a neutral location where movables may be stored safely for a time period of two months;

ç) state reserved according to the rules in force for the storage of objects.

For the storage of objects according to letter "b" and "c" of this article, expenses are paid by the debtor in the moment of taking over of the objects.

If within two months from release, the debtor does not claim for his movables, according to the above letters, or does not pay all the expenses of release and storage, according to letter "b" and "c" of this article, seizable movables, will be sold by the judicial bailiff according to the provisions of part IV, chapter II of this Code. The bailiff, after reducing from the amount gained from the sale by auction all the expenses for release and storage of objects of the debtor disburses the remaining amount in a bank account in the name of the debtor. The unseizable objects are returned to the debtor despite the place where they are stored without the requirement for him to pay for expenses.

Movables located within the immovables which may not be sold and claimed by the debtor are eliminated or transferred to state institutions or state public entities, capital transfer.

Article 602
Placement in possession of immovable thing

When the immovable thing, on which a decision is issued, is not freed voluntarily by the debtor within the time limit designated in the notice by the bailiff, the creditor is placed in possession of the thing. For this the bailiff, at least three days in advance, notifies to the debtor the day and time on which he shall place the creditor in possession of the thing.

On the designated day and time, the bailiff equipped with the order of execution, goes to the place where the thing is located and places the creditor in possession of it by instructing other persons who hold the thing to recognize the creditor as owner.

Article 603
Placement in possession of thing being with a third person

When the bailiff assesses that the immovable thing is in the possession of a third person, who has gained for himself the possession of the thing,

after the commencement of the case on which is issued the decision under execution, he places the creditor in possession of the thing, indicating in the decision how he has assessed the time in which the third person has gained possession.

Article 604
Criminal responsibility of debtor and of third person

When the debtor or the third person, who is divested of the possession of the thing, is again placed in possession of the thing in any illegal manner, the bailiff, on the request of the creditor, divests that person from the possession of the thing.

In these cases, the debtor or the third person has responsibility in conformity with the provisions of the Penal Code.

CHAPTER VIII
EXECUTION OF OBLIGATION FOR PERFORMANCE OF DETERMINED ACTION

Article 605
Cases when creditor is allowed to perform execution himself

When the debtor does not execute his obligation, which is related to an action which can be performed also by other persons, the creditor may request from the bailiff to be allowed to perform himself this action on the account of the debtor.

Article 606
Sanctions for non-performance of action by the debtor
(Amended by Law no. 8812, dated 17.5.2001, article 124)

A debtor refusing, incorrectly following or failing to respect timeframes or to act in conflict with the court decision, and when penal responsibility is not applicable, shall be subject to a fine determined by the Bailiff up to the amount of 50,000 ALL for any case until execution of the obligation.

Appeals against the decision of the Bailiff can be filed with the court within five days of the announcement of the decision.

Third parties who, according to the execution order or the law, are obliged to perform certain actions, in circumstances defined in the first

paragraph of this Article, and are subject to a fine determined by the Bailiff up to the amount of 50,000 ALL.

Appeals against the decision of the Bailiff can be filed with the court within five days of the announcement of the decision.

Article 607
(Repealed by Law no. 8431, dated 14.12.1998, Article 12)

Article 608
Appeal
(Repealed by Law no. 8431, dated 14.12.1998, Article 12)

CHAPTER IX
MEANS OF DEFENCE AGAINST EXECUTION OF DECISIONS

Article 609
Invalidity of executive title
(Amended the last paragraph by Law no. 10 052, dated 29.12.2008, Article 48; amended paragraph III, added paragraph IV, by Law no. 122/2013; amended by Law no. 114/2016, Article 9)

The debtor may request to the competent court of the place of execution to be declared that the executive title is invalid or that the obligation does not exist or that it exists to a smaller amount or has increased subsequently. The time limit for presenting this statement of claim is 30 days from receipt of notification on the beginning of the obligatory execution.

When the executive title is a court decision or an arbitral award, the debtor may contest the execution of the title only for facts occurred after the issuing of those decisions.

In these cases, the court may decide to suspend the decision with or without a guarantee. When the executive title is an act to provide bank loans or and act to provide loans from non-banking financial institutions, the court may decide to suspend the execution, only with a guarantee and for a period not longer than 3 months, except when the court, within this term, takes a final decision to accept the claim. When the 3 months term expires or when the court, within this term, decides to refuse the claim or to dismiss its adjudication, the measure to suspend the execution of the decision is considered as not in force. Suspension of the decision is not decided by the

court when the debtor claims that the obligation imposed on the executive title, which is an act for granting bank loans or an act of granting loans from non-bank financial institutions, exists to a lesser extent.

The court examines the requests for suspension, in accordance to this article, within 5 days. Against this decision a special appeal may be made. The court of appeal shall examine the appeal within 30 days from the date of its filing in this court.

Against the final decision of the court a special appeal can be made, in accordance to the rules of general appeal. The court of appeal shall examine the appeal, within 60 days from the date of its filing in that court.

In its administrative unifying decision No. 00-2023-5688(409), dated 23.11.2023, the Administrative Chamber of the Supreme Court, has addressed for unification the following matters:

> The Administrative Chamber of the Supreme Court (hereinafter "the Chamber"), on 13.07.2023, after reviewing the case *in camera* with a judicial panel composed of three judges, decided to transfer the case to a judicial session for the purpose of unifying practice, having submitted for unification the following question:

1. "In application of Articles 45 and 56 of Law No. 49/2012, as amended, is the right to appeal/recourse against final decisions of the administrative court concerning a claim with the object "Invalidity of the executive title' limited, as well as the right to appeal against the actions of the judicial enforcement officer"?

Regarding the above, the Administrative Chamber of the Supreme Court has determined the following:

> 29. It cannot be concluded *a priori* that the listed administrative acts possess the status of an executive title. The only exception may be the administrative act imposing a penalty for the commission of an administrative violation, which the special legislation considers an executive title and is immediately enforceable (letter "a"). In all other cases, the law requires that such acts be converted into executive titles in order to commence mandatory execution. In the event that, during the phase of mandatory execution of the executive title, procedural legal relationships arise - both between the parties asserting rights or bearing obligations under the title and against the judicial bailiff, as the entity that, through its procedural activity, executes the title - the KPC has provided an additional protective remedy, namely the appeal against the actions of the latter (bailiff).

30. For this final phase of the judicial process, unlike civil litigation, Law No. 49/2012, in its Articles 66 and 67, provides specific rules regarding the execution of the judicial decision, a procedure that is pursued by the judge who rendered the decision on the matter. Nonetheless, even in this case, its execution is carried out by the bailiff, with the parties being granted, during the execution phase, the opportunity to challenge the actions of the bailiff, pursuant to Article 610 of the KPC.

31. In order to guarantee the right to a fair legal process throughout civil and administrative proceedings, the Code of Civil Procedure (KPC) provides for effective procedural remedies even during the phase of mandatory execution. In adherence to the principle of legality, and with the aim of correcting any errors that may be committed by the judicial enforcement officer during enforcement, as well as preventing harm that may result to the parties from such actions, the law offers the remedies of nullity of the executive title (Article 609 of the KPC) and objection to the actions of the bailiff (Article 610 of the KPC).

The judicial process conducted during the enforcement phase is conceived as a continuation of the substantive judicial proceedings, forming a single and uninterrupted process, wherein the execution judge, through decisions issued at this stage, exercises control over the enforcement activity of the bailiff, in the same way that the judge of the main proceedings controls and directs the substantive trial through interim decisions and procedural orders.

32. With regard to the nature of the procedural remedies provided under Articles 609 and 610 of the KPC, in Unifying Decision No. 392, dated 26.10.2022, the Civil Chamber of the Supreme Court emphasized that:

"…*64. Both remedies provided under Articles 609 and 610 of the KPC, although they fall within the category of protective measures available to the debtor against the mandatory execution of the executive title, differ in: (i) their legal basis; (ii) the time limits for filing; (iii) their procedural form; and (iv) the consequences and legal effects they produce on the parties involved in the enforcement of an executive title*."

66. The executive title, as a legal concept, signifies the existence of a subjective material right, either infringed or unfulfilled. For this reason, the executive title constitutes the immediate and direct legal basis for the creditor's standing to initiate the compulsory

execution process - a standing which derives from the fact that the person in whose favor the executive title is issued, or who possesses it, holds the substantive right embedded therein.

67. A claim challenging the executive title constitutes a substantive proceeding, which focuses on the scope and extent of the material right reflected in the executive title, and as such, it is subject to ordinary adversarial adjudication. Through such a claim - by proving the contrary - the debtor seeks to contest the creditor's right, while the creditor, for his part, aims to proceed with the enforcement of the obligation. This type of claim contains the elements of a negative declaratory action.

By contrast, the challenge to the actions of the judicial enforcement officer is a procedural remedy that seeks to contest the validity of acts undertaken in the process of compulsory enforcement of the executive title - acts carried out, or omitted, by the enforcement officer. In these types of proceedings, the court no longer examines the substance of the creditor's right as recognized in the executive title. Rather, it evaluates, from a procedural standpoint, whether the objection has been filed within the legal deadline explicitly provided in Article 610 of the Code of Civil Procedure, and whether the enforcement officer's actions were performed in accordance with the law.

The grounds upon which the actions of the bailiff may be judicially challenged primarily concern procedural irregularities during their execution, or the lack of legal conditions necessary to proceed with the enforcement of the executive title.

33. Based on this legal and jurisprudential analysis, the Chamber finds that, given their object and underlying cause, these two procedural remedies cannot properly coexist within a single claim as independent requests. For example, where partial or complete invalidity of the executive title is sought, the consequence of such a claim would necessarily be the annulment of part or all of the compulsory enforcement process. In this context, the claimant's focus is not directed at specific actions or omissions of the enforcement officer.

Conversely, where the claim seeks the declaration of unlawfulness of a specific enforcement act or omission, the claimant raises allegations concerning the manner in which the enforcement is being carried out.

The remedy under Article 609 of the Code of Civil Procedure constitutes a claim (lawsuit), whereas the remedy under Article 610 is an appeal, within the meaning of Article 442/a of the same Code. These remedies are distinct in nature and are not automatically combinable within a single judicial proceeding.

Article 610
Objection to the action of the Bailiff

(Amended by Law no. 8812, dated 17.5.2001, Article 125; by Law no. 10 052, dated 29.12.2008, Article 49; by Law no. 122/2013; by Law no. 114/2016, Article 10; paragraph III added by Law no. 44/2021, Article 31)

Against the actions of the judicial bailiff, carried out in contravention of the procedures provided by this Code and against the refusal of the judicial bailiff to carry out an action imposed by law, the parties may make an appeal to the court that executes the decision, within 5 days from the day of performance of the action or rejection, when the parties have been present in the conduct of the action or have been summoned and, in other instances, from the day they have been notified or have been informed of the action or refusal.

Against the actions of persons, judicial bailiffs who exercise the public activity of judicial enforcement service organised on private basis the debtor may lodge a complaint with the court where executive title is enforced, within 5 days from the performance of the action.

Appeals against the actions or refusal of the judicial bailiff are reviewed by the same single judge, throughout the phase of compulsory execution of the executive title, when the actions or refusal of the judicial bailiff are related to the same executive title, unless otherwise provided by law.

The appeal shall be examined within 20 days by the court of the place of execution, which when it deems necessary, may order to attend the parties and the judicial bailiff.

The appeal against actions or rejection of the judicial bailiff shall not suspend execution, unless the court decides otherwise. When the executive title is an act for granting bank loans or an act for granting loans from non-bank financial institutions and the court has decided to suspend the execution of the decision, the suspension measure is considered to have ceased to have effect within 20 days from the moment of the grant of the decision on suspension.

Against the court decision a special appeal can be filed.

The examination of the appeal against the decision of the court of first instance for the objection of execution actions, as a rule, is done by the court of appeal without the presence of the parties, within 30 days.

Exceptionally, the court of appeal may decide to examine the case in a court hearing with the presence of the parties, within 45 days, if it values that the judicial debate is necessary to assess:

a) to ascertain the factual situation fully and accurately, new facts must be established and new evidence must be obtained, unless the appellant proves that without his fault, he could not present these facts or request this evidence in the examination of the case at the court of first instance, within the prescribed time limits;

b) the decision, against which the appeal was filed, is based on serious procedural violations, or on erroneous or incomplete ascertainment of fact;

c) with the scope to rightly ascertain the factual situation, it must repeat the receipt of some or of all evidence obtained by the court of first instance.

In its civil unifying decision 00-2022-4586(392), dated 26.10.2022, the Civil Chamber of the Supreme Court has addressed for unification the following matters:

1. What is the appeal period for challenging the decision of the court of first instance that ruled on the appeal against the actions of the judicial enforcement officer pursuant to Article 610 of the KPC?
2. Does the special appeal provided for in this provision imply that, by means of this remedy, both the court decision suspending the enforcement actions and the final decision ruling on the appeal against the enforcement action are being challenged?

Regarding the above, the Civil Chamber of the Supreme Court has determined the following:

> Article 610 of the KPC permits a special appeal, within a period of 5 days, against the decision of the court of first instance that ruled on the appeal against the actions of the judicial enforcement officer. The special appeal provided for in Article 610 of the KPC is the remedy by which one challenges both the decision for "suspension of enforcement actions" and the final decision ruling on the "challenge against the enforcement action".

Article 611
(Repealed by Law no. 122/2013, article 46)

Article 612
Lawsuit to request thing from third person

Each third person who claims to be owner of the thing on which execution is made, may bring a lawsuit to exercise his right and if it is the case to exempt the thing from seizure and sale.

Lawsuit is brought against the creditor and the debtor in the court of the place of the execution of the decision. In these cases, the court may decide as a temporary measure the suspension of the execution with or without guarantee.

Article 613
Juridical effects against third person

When the court accepts that the third person is owner of the movable thing, but at the time the decision has become irrevocable the thing has been sold in the free sale shop or by auction, the third person has the right to request from the bailiff the price of sale if that has not been given to the creditor, in the opposite case he has the right to request from the debtor what he has benefited from the sale of the thing.

When it is certified that the creditor knew at the time of the sale of the movable thing that the debtor was not its owner, he is obligated to return to the previous owner the price he has received from the sale of the thing and if the thing has been given to him in lieu of the credit, he is obligated to return the thing. In these cases, the creditor preserves his right of credit from the debtor.

Article 614

When the court accepts that the third person is owner of the immovable thing sold by auction and on basis of the decision that has become irrevocable, the thing is taken from the buyer, the latter has the right to request from the bailiff the price he has paid if that has not been given to the creditor. If the price has been given to the creditor, he has the right to request from him as well as from the debtor that part of the price which was received from the sale of the thing.

The buyer also has the right to request from the competent state organ the return of the amounts he had paid as tax for the passage of the thing in his ownership.

When the immovable thing has been given to the creditor against his credit, on the basis of the court decision, the thing is taken from him, he preserves his right of the credit from the debtor.

CHAPTER X
SUSPENSION AND CESSATION OF EXECUTION

Article 615
Suspension of execution

(Amended by Law no. 10052, dated 29.12.2008, article 50, Law no. 122/2013, article 47)

Execution is suspended:

a) by a court decision in the instances provided by law;

b) on the request of the creditor;

c) in the cases provided in letters "c" and "ç" of article 297 of this Code, with the exception of the sale by auction of an immovable thing, on which the announcement is made;

ç) in other cases provided by law;

d) when the judicial bailiff, alone or under the auspices of the creditor does not find property of the debtor within 6 months from the institution of enforcement;

dh) when the creditor does not present himself without reasonable grounds, within 3 months from the second notice by letter, made by the judicial bailiff.

Following the dismissal of the suspension measure, enforcement continues from the procedural action remained in the moment of suspension

Article 616
Cessation of execution

(Repealed letter "d" by Law no. 10 052, dated 29.12.2008, Article 51; letter "c" amended by Law no. 122/2013)

Execution is ceased:

a) when the debtor presents to the bailiff the statement signed by the creditor, duly certified, that he has paid the amount indicated in the execution order, or a payment note from the post office or a

bank letter in which it is certified that the amount indicated in the execution order has been paid to the benefit of the creditor;

b) when the creditor renounces in writing from the execution;

c) when the court declares, by a judicial final decision, according to article 609 of this Code, that the executive title is invalid, or that the obligation does not exist, or exists in a lower amount, or that has been abolished afterwards;

ç) when by a decision of the court which has become irrevocable the lawsuit of the debtor in conformity with article 610 of this Code, or of the third person in conformity with article 613 of this Code is accepted;

d) repealed.

Article 617
Appeal against suspension and cessation of execution
(Amended by Law no. 10052, dated 29.12.2008, article 52)

The suspension of the execution, except in the cases when it is decided by the court, and the cessation of the execution are decided by the bailiff.

Appeal may be made against these decisions in the district court (article 611 of this Code). When the decision of suspension of execution becomes final, the judicial bailiff shall remove the seizure over the movable or immovable properties and in the case foreseen by letter "b" of article 616 of this Code, he returns the execution order to the creditor, who has the right to file a new request for execution within the lapse of time period. In this case the new statute barring starts from the day the decision for the cessation of the execution has become final.

CHAPTER XI
TRANSITIONAL AND FINAL PROVISIONS

Article 618

The cases which are in adjudication on the day this Code becomes effective shall be adjudicated on the basis of the previous Code until the decision becomes irrevocable in conformity with article 451 of this Code.

Article 619

Recourses against decisions of the court of appeal and the requests for protection of legality before the Civil Chamber of the High Court registered before this Code becomes effective shall be considered in conformity with provisions of the previous Code.

Article 620

With this Code becoming effective are invalidated: law No. 6341 dated 27.06.1981 "On the Code of Civil Procedure of the Republic of Albania", law No. 7537 dated 17.12.1991 "On some changes in the Code of Civil Procedure of the Republic of Albania", law No. 7922 dated 19.04.1995 "On a change in the Code of Civil Procedure of the Republic of Albania", chapter X/I "Depreciation" articles 59 a, 59 b, 59 c of law no. 7782 dated 26.01.1994 "On some changes in decree no. 3702 dated 08.07.1963 on cheques" as well as any other provision which is contrary to this Code.

Transitory Provisions

(Provided by Law no. 8812, dated 17.5.2001, article 127)

Civil cases that are being tried on the day this law comes into effect and which, in accordance with the Code of the Civil Procedure, must be tried by an adjudicating body composed of three judges, for which this law provides an adjudication by one judge, shall continue to be tried by the same adjudicating body until an irrevocable decision is issued.

Requests relating to the dismissal of the judge, statements of claim with the scope of opposing a third party, the review of a decision, as well as recourses in the interest of the law, which are presented before this law comes into effect, shall be tried according to the provisions of the Code of Civil Procedure.

Transitional Provision

(Provided by Law no. 10 052, dated 29.12.2008, Article 53)

Cases that are in execution proceedings on the date this law enters into force shall be executed according to the previous legal procedures, until the execution of the executive order has been suspended, terminated, or completed.

Transitory Provision

(Provided by Law no. 122/2013; amended by Law no. 160/2013)

Civil cases that are being tried at the first instance court and the court of

appeals on the date when this law enters into force will continue to be tried on the basis of the law of the time when the claim has been submitted.

Cases which are not yet executed from the judicial bailiffs, at the moment when this law entered into force, will be executed on the basis of this law.

Transitory provisions
(Provided by Law no. 38/2017, article 108)

Articles 102, 103, 104, 105, 105/b, 106, 107 and 110, on court fees and costs, shall be effective on the day of entry into force of the law "On court fees".

Transitory provisions
(Provided by Law no. 38/2017, article 109)

1. Civil cases, which are under adjudication in the Court of First Instance, the Court of Appeal or the High Court on the date of entry into force of this law, shall continue to be adjudicated by the law in force at the time of filing the statement of claim.

2. Civil cases that are sent for trial to the Court of AppSeal or the High Court, after the entry into force of this law will be adjudicated according to the legal provisions in force at the time of lodging the appeal or recourse.

Sublegal acts
(Provided by Law no. 38/2017, article 110)

1. The Ministry of Justice is tasked to adopt, within 3 months from the entry into force of this law, the acts for the implementation of articles 68 and 70 of this Law.

2. The High Judicial Council is tasked to adopt, within 3 months from the entry into force of this law, the acts for the implementation of articles 32 and 88 of this Law.

Transitory provision
(Provided by Law no. 44/2021, article 32)

1. The composition of the adjudication panels as well as the adjudication procedure in the High Court is regulated according to the provisions of this law, despite the different provisions in other laws.

2. The submitted, but still not examined recourses are considered admissible if they meet the provisions of the applicable law at the time of their filing.

Article 621

This Code becomes effective on 1st June 1996.

Proclaimed by decree No. 1474, dated 18.4.1996 of President of the Republic, Sali Berisha.

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