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SMALL CLAIMS PROCEDURE IN ALBANIA AND EQUIVALENT PROCEDURES TO ORDER FOR PAYMENT

WEBINAR

APPLICATION OF EUROPEAN ORDER FOR PAYMENT PROCEDURE AND EUROPEAN
SMALL CLAIMS PROCEDURE IN NATIONAL PROCEEDINGS.

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CONTENT

I. SMALL CLAIMS PROCEDURE IN ALBANIA

A. PURPOSE OF SMALL CLAIMS PROCEDURE IN ALBANIA

B. SCOPE OF APPLICATION

C. PARTICULARITIES OF THE SMALL CLAIMS PROCEDURE

D. MAIN DIFFERENCES BETWEEN THE ALBANIAN SCP AND ESCP

E. DATA ON THE IMPLEMENTATION OF THE SMALL CLAIMS PROCEDURE IN ALBANIA

II. MECHANISM EQUIVALENT TO ORDER FOR PAYMENT



I. SMALL CLAIMS PROCEDURE IN ALBANIA

A. PURPOSE OF SCP IN ALBANIA

- Provided for the first time in 2017 in the framework of the justice reform – The law no. 38/2017 On some amendments to the Civil Procedure Code (CPC)
- The aim:
 - Increase the efficiency of the judicial system by regulating the adjudication of small claims by a simpler and faster procedure;
 - increase access to justice;
 - Reduce courts' backlogs.
- Drafted taking into account the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 Establishing a European Small Claims Procedure



I. SMALL CLAIMS PROCEDURE IN ALBANIA

B. SCOPE OF APPLICATION

- The scope of application of small claims procedure in Albania is limited based on:
 - The subject matter of the dispute – only claims arising out of contractual relationships, thus excluding non-contractual damage
 - The amount of the dispute – up to 20 times the minimum wage
 - The minimum wage in Albania is 30,000 ALL (approximately 250 Euro - Decision of the Council of Ministers no. 1025, dated 16.12.2020). Claims amounting up to 600,000 ALL (approximately 5000 Euro), instead of up to 150,000 ALL (approximately 1200 Euro), which was provided before the latest amendments of the Albanian Civil Procedure Code with the Law no. 44/2021, are considered small claims.



I. SMALL CLAIMS PROCEDURE IN ALBANIA

C. PARTICULARITIES OF THE SMALL CLAIMS PROCEDURE

- Possibility of conducting an entirely written procedure
 - Exceptionally, the court may hold an oral hearing if it deems it reasonable (Article 162/a(2) of the CPC). This is distinct from the general rule of ordinary trials, where according to Article 172 (1) of the CPC the examination of the case before the court is done orally, but the parties can submit their submissions in writing.
- The use of electronic means of communication to hear the parties – possibility of holding remote hearings.
 - Article 285 (a) of the CPC - when the court deems it reasonable, it decides that the parties provide explanations in writing or by videoconference. ...At the reasoned request of the parties, as well as when the court deems it reasonable, the parties may be questioned through other means of distance communication
- Obtaining witness testimony through written statements or videoconference - Article 236/a CCP



I. SMALL CLAIMS PROCEDURE IN ALBANIA

C. PARTICULARITIES OF THE SMALL CLAIMS PROCEDURE

- In case of submission of a counter-claim, the value of which exceeds the amount of 600,000 ALL, the trial is conducted according to the general provisions for ordinary trial (Article 162 /a (4) CCP).
- Costs – currently there are no specific court fees provided for small claims/Fees stipulated for general claims apply:
 - A fixed fee of 3,000 ALL (25 Euro) is applied to contractual claims of a value up to 100,000 ALL (800 Euro) and a fee consisting of 1% of the value of the claim is applied when its value is over 100,000 ALL (800 Euro).



I. SMALL CLAIMS PROCEDURE IN ALBANIA

C. PARTICULARITIES OF THE SMALL CLAIMS PROCEDURE

- Rendering an unreasoned decision if the parties, within three days from its service do not notify the court in writing that they will appeal it before the court of appeals – Article 310(II)(3) CCP
 - **Debate:** Is this constitutional, considering that Art.142 of the Albanian Constitution expressly provides that court decisions must be reasoned? The constitutional court in its consolidated jurisprudence has stated that the reasoning of the decision is a guarantee for due process, shows the parties that they have been heard and gives them the opportunity to appeal this decision, and the higher courts to review the decision.
 - **Practical problem:** when does the decision become final? After the expiry of the 3-day time limit, or after the expiry of the regular appeal time-limit of 15-days after the service of the reasoned decision? Can the parties exercise appeal after the 3-day time limit has expired and they have not notified the court that they intend to appeal the decision?
- Not allowing recourse to the High Court against decisions of the courts of appeals -Art.427/2



I. SMALL CLAIMS PROCEDURE IN ALBANIA

D. MAIN DIFFERENCES BETWEEN THE ALBANIAN SCP AND ESCP

- Scope of application: Albanian SCP narrower – limited only to contractual disputes. Can apply either to domestic or cross-border disputes. As of 2021 there is no difference about the amount of the dispute.
- Albanian SCP is not a standardized procedure – there are no standard forms to be used – lacks special provisions regarding the form and content of procedural acts
- Albanian SCP lacks special procedural deadlines for adjudicating small claims (e.g., no special/shorter deadlines for submitting the statement of defense or adjudicating the case at first instance and on appeal, which may simplify and speed up the process even more)
- Under the Albanian SCP there is no possibility of using the technology for filing a claim electronically
- Under the Albanian SCP there is no possibility of paying court fees online



I. SMALL CLAIMS PROCEDURE IN ALBANIA

E. Study on the implementation of the Small Claims Procedures in Albania

(Project “Monitoring the implementation of justice reform” 2019-2020, implemented by the University of Tirana, Faculty of Law financed by the Foundation Open Society for Albania)

- The introduction of small claim procedures in Albania has neither brought an increase in the number of small claims filed in the courts nor in the types of disputes subject to these claims.
 - During 2018, 377 claims of a value up to 150,000 ALL and arising out of contractual relations were filed and adjudicated with the Tirana Judicial District Court. While during 2016, (when no small claims procedure existed), 532 claims of a value up to 150,000 ALL and arising out of contractual relations were filed and adjudicated with the Tirana Judicial District Court.
 - Subject matter of disputes which the parties have addressed the court – disputes that have arisen out of contracts for providing internet access, cell phone service contracts, telephone service contract

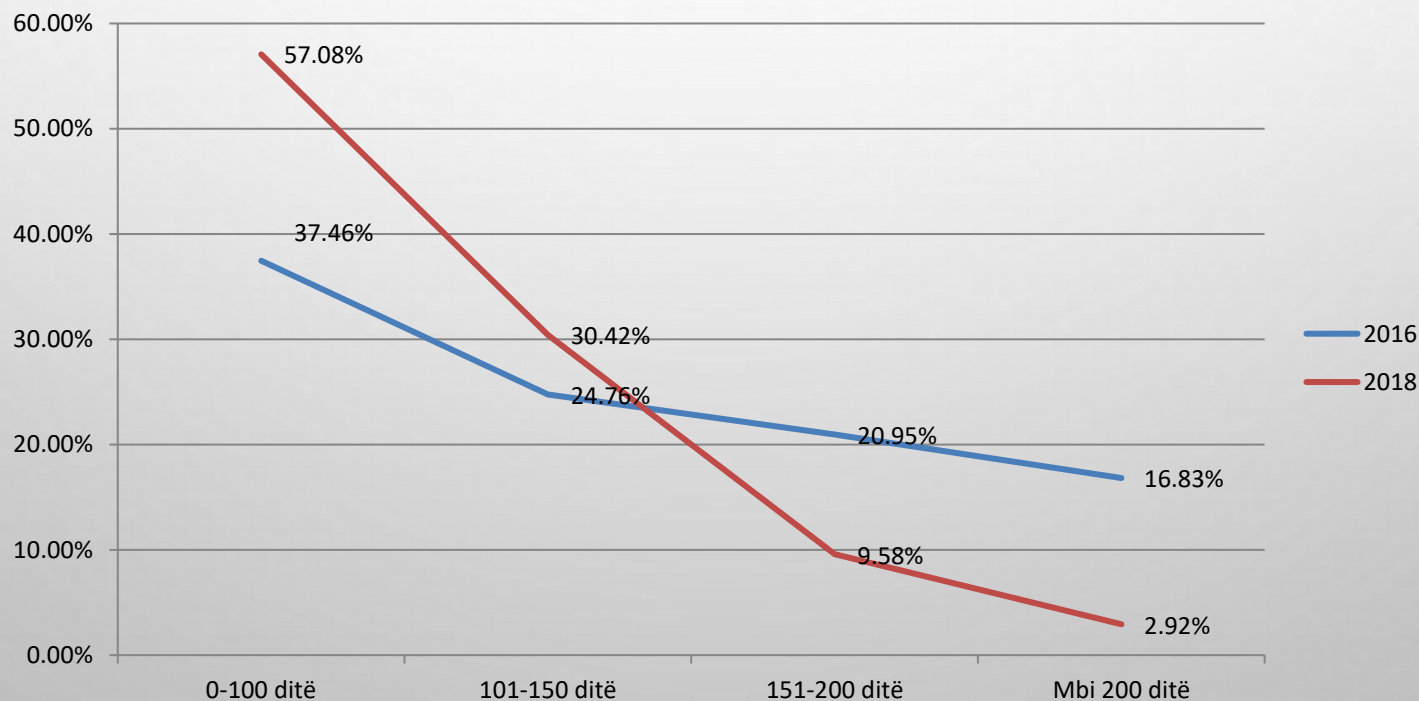


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- **The introduction of small claim procedures in Albania has led to relatively faster proceedings: in 2016 the average length of proceedings of claims meeting the criteria to be considered small claims under the new rules was 135 day, while in 2018 was 98 days.**





II. IS THERE A MECHANISM EQUIVALENT TO EOPP?

- THERE IS NO ORDER FOR PAYMENT PROCEDURE IN ALBANIA
- IS THERE ANY EQUIVALENT MECHANISM?

LAW NO. 48/2014 ON LATE PAYMENTS IN CONTRACTUAL AND COMMERCIAL OBLIGATIONS

Article 16

Executive title

"1. Monetary obligations, arising from commercial legal actions, which have not been paid within the relevant payment period, according to this law, except for the cases provided for by article 485 of the Civil Code (in case of suspension of the obligation), constitute an executive title and are executed by the bailiff, regardless of the value when:

- a) the creditor has delivered the goods or performed the services according to the contract and the law; and
- b) the debtor has not contested the obligation.

2. In such cases, the obligation together with the interest on arrears and the compensation for the costs of repaying the loan may be put into compulsory execution, in accordance with the provisions of the Code of Civil Procedure. "



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**THANK YOU FOR YOUR
ATTENTION!**