Questionnaire for national reports

Revised

National Report: ALBANIA

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General guidelines

This questionnaire addresses practical and theoretical aspects regarding the structure, contents and effects of enforcement titles in EU Member States and one Candidate Country. Each partner should provide substantive answers for their respective State/Country (or additional State/Country, if specifically stipulated by the coordinator). Certain questions require knowledge on instruments of cross-border enforcement in the EU, particularly Regulation 1215/2012 ("Brussels Ia Regulation"; hereinafter also: B IA). The latter questions address the interplay of national law and the EU regime on cross-border enforcement in civil and commercial matters.
For useful information, especially relating to B IA and cross-border enforcement in the EU, please refer, among other sources, to:

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[1]
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[2]
- Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[3]
- Study on residual jurisdiction (Review of the Member States' Rules concerning the 'Residual Jurisdiction' of their courts in Civil and Commercial Matters pursuant to the Brussels I and II Regulations),[4]
- Report on the Application of Regulation Brussels I in the Member States (Heidelberg Report),[5]
- The Commission's Civil Justice Policy site,[6]
- The European e-Justice portal,[7] embedded with the European Judicial network (and the old e-Justice portal).[8] The portal features several many useful sources, e.g. Study on European Payment Order, Study on making more efficient the enforcement of judicial decisions within the European Union etc.
- The Access to Civil Justice portal[9] hosted by the University of Maribor, Faculty of Law together with the results of our previous projects and the project blog.

[1] OJ L 351/1, 20.12.2012. Available at:
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1215&from=EN.
[2] COM(2010) 748. Available at:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF.
[3] COM(2009) 174 final. Available at:
http://ec.europa.eu/civiljustice/news/docs/report_judgements_en.pdf.
[4] http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf.
[5] B. Hess, T. Pfeiffer, P. Schlosser, Study JLS/C4/2005/03, 2007. Available at:
http://ec.europa.eu/civiljustice/news/docs/study_application_brussels_1_en.pdf.
[6] https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice_en.
[7] https://e-justice.europa.eu/home.do?plang=en&action=home.
[8] http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm.
[9] https://www.pf.um.si/en/acj/.

The structure of each individual report does not necessarily have to follow the list of questions enumerated below, however, following the structure is strongly advised. The questions raised should be dealt with within the reports, however, the authors are free to decide where this will be most suitable. If authors choose to address certain issues elsewhere within the questionnaire, then they are instructed to make cross-references and specify where they have provided an answer for the respective question (e.g. "answer to this question already provided in 1.6."). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.

The list of questions is not regarded as a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside.

Please provide representative references to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data.

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Languages of national reports: English.

Deadline: 30 April 2020.

Upload report to: "https://www.dropbox.com/request/Vw2BGUFUFRO8ukJylrfr".

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Terminology used in the questions

The use of a unified terminology can certainly ease the comparison between national reports. For the purposes of this questionnaire, the following definitions shall apply:

Action: Used in the sense of lawsuit, e.g. "bringing an action" (starting a lawsuit, filing a suit). Should be differentiated from 'claim'.

Appeal in Cassation: Second appeal in the Romanic family of civil procedure (in the Germanic family one uses "Revision" instead).

Application: Request addressed to the court. Note: the term "motion" is in B IA exclusively used for acts issued by the court.

Astreinte: Monetary penalties used as a means of enforcing judgments in certain civil law jurisdictions. A proper English term to describe "*astreinte*" does not exist.

Authentic instrument: A document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose

Civil Imprisonment: Imprisonment of a judgment debtor in order to force them to satisfy the judgment.

Claim / Defence on the Merits: Claim or defence which concerns the specific case at hand and not preliminary (procedural) issues. Opposite of preliminary defences.

Claimant: Before the Woolf Reforms (England and Wales) designated as "Claimant". In your contributions, please only use "claimant" (the term which is also used in B IA).

Co-litigants: More than one person being considered a party or several parties on either the Claimant or the Defendant side.

Counsel: Generic term for the lawyer assisting a party. We would advise to use this terminology instead of "advocate", "procurator", etc.

Court of origin: The court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Court settlement: A settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings.

Default: Failure to perform the required procedural act (e.g. where the summoned defendant does not appear); failure to perform.

Defaulter: Party in a civil action who does not perform the required procedural act.

Defendant: Please use this term instead of "Respondent".

Enforcement: Use the term enforcement instead of execution.

Enforcement officer: Official involved in enforcing court rulings. Enforcement is among the duties of a "*huissier de justice*" in France and other jurisdictions belonging to the Romanic family of civil procedure.

Ex officio / Sua Sponte: Both "*ex officio*" and "*sua sponte*" are used to indicate that the judge may act spontaneously without being asked to do so by the parties. In other words, we are dealing with powers of the judge that he may exercise of his own motion.

Final judgment: Judgment that is binding on the parties and against which generally no ordinary legal remedy is permitted.

Hearing: Session before the court, held for the purpose of deciding issues of fact or of law. For civil law jurisdictions, we would suggest avoiding using the terminology "trial" (which in English civil procedure refers to a specific stage in litigation).

Interlocutory Proceedings: Proceedings that are not aimed at obtaining a final judgment on the merits in the case but aim at an intermediate, non-final decision in a pending lawsuit.

Joinder of Claims: The position whereby Claimant raises (either initially or after the initiation of proceedings) several claims.

Judgment: Any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

Judicial Case Management: An approach to litigation in which the judge or the court is given powers to influence the progress of litigation, usually in order to increase efficiency and reduce costs.

Main Hearing: In German: *Haupttermin*.

Means of recourse against judgments: General terminology to indicate all possible means to attack judgments, e.g. ordinary appeal, opposition, cassation, revision etc.

Member State of origin (MSO): The Member State in which in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered.

Member State addressed (MSA): The Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought.

Operative part: The "tenor" or "holding" part of the Judgement which contains a "finding" or "declaration" or "order" to the debtor to pay a sum of money or undertake an action. Usually denotes the obligation of the debtor, executable in enforcement proceedings. In German: *Urteilstenor*.

Opposition: Act of disputing a procedural act or result, e.g. a default judgment.

Preclusion: The fact that a party is barred (precluded) from taking specific steps in the procedure since the period for taking these steps has expired ("*Reihenfolgeprinzip*").

Preliminary defences: "Exceptions"; (usually) procedural defences. Opposite of defences on the merits.

Process server: Official serving the summons on the opponent party. This is among the tasks of a "*huissier de justice*" in France and other jurisdictions belonging to the Romanic family of civil procedure.

Second instance appeal: First appeal, not to be confused with a Cassation Complaint or Revision (i.e. second appeal or third instance appeal).

Statement of Case: General terminology for the documents containing the claim, defence, reply, rejoinder etc. Before the Woolf (England and Wales) reforms these documents were indicated as "pleadings". In French: "conclusions".

Statement of Claim: Document containing the claim.

Statement of Reasons: The part of the judgment that contains the grounds for the decision.

Statement of Defence: Document containing the defence.

Part 1: General inquiries regarding Enforcement titles

1.1 Briefly present how an "enforcement title" is defined in your national legal order.

Comment: *In addition to the definition, enumerate the domestic judicial (and other legal) instruments which conform to the above definition of an enforcement title. If there is a statutory definition, then please provide the citation to the exact article/paragraph of that law and an English translation. Provide a list of enforcement titles.*

The Albanian national legislation does not define explicitly the 'enforcement title'.

According to the case law, an enforcement title is a final act that shows the recognition of the full, precise, defined obligation of one person or entity against another one under the provisions of the law.[10]

As per an Unified Judgment of the Albanian High Court[11] "enforcement titles are mainly judicial judgments, as well as, in exceptional cases, other acts expressly provided for in the CPC, or in special laws, which, by virtue of their enforcement power, are equated for all effects with irreversible judgments. An act issued by a competent state body, or prepared and certified by a public servant, under the conditions explicitly provided by law, to be an enforcement title, must contain a known, required and precise obligation, which is not related to the fulfillment of certain deadlines and, above all, unconditional due to other circumstances or other mutual obligations."

Article 510 (and 511) of the Albanian Civil Procedure Code (hereinafter ACPC) provides a list of enforcement titles, that are as follows:

1. irreversible/peremptory civil judgments of the court containing an obligation;
2. interim judgments on security claim;
3. judgments on temporary enforcement;
4. judgments on fines imposed by the court;
5. judgments on mandatory taking of evidence;
6. judgments on the part ordering costs of the proceedings;
7. irreversible/peremptory criminal judgments in the part dealing with property rights;
8. foreing judgment that are recognized in Republic of Albania (hereinafter RoA) in accordance with the provisions of the ACPC;
9. foreing arbitral awards that are recognized in Republic of Albania (hereinafter RoA) in accordance with the provisions of the ACPC;
10. arbitral awards issued in the RoA;
11. notary documents containing monetary obligations;
12. documents for granting bank loans;
13. documents for granting loans from non-bank financial institutions;
14. bills of exchange, cheques, and order papers equivalent to them;
15. other documents that according to specific laws are considered enforcement titles and the enforcement officer is authorised to enforce them.

The last point of the above list provision (15) covers all those cases when a specific law provides explicitly the documents that should be considered enforcement titles. Examples:

i. Law No. 7703, dated 11.5.1993 "On Social Security in the Republic of Albania" (Art. 15 (4) provides that "The Act, which contains the obligation to pay contributions, constitutes

[10] Judgment of the Civil Chamber of the High Court no. 169, dated 05.03.2013, parag. 20
[11] Unified Judgment of the Albanian High Court No 980 dated 29.09.2000

an enforcement title and is enforced by the Enforcement officer." Also, article 18 (2) of this law states that: "For unpaid contributions by entities within the deadline, the social security authorities have the right to issue an obligation order, which is an enforcement title and is enforced by the Enforcement officer."

ii. Law no. 8662, dated 18.09.2000 "On the treatment as an enforcement title of the electricity consumption bill" (Art. 1), expressly states that: "The tax bill on electricity consumption, sale, purchase and the bill of electricity transmission and distribution service, according to the model set by the Ministry of Finance, pursuant to Article 36 of the Law No. 7928, dated 27.4.1995 "On Value Added Tax", is an enforcement title and the Enforcement officer is charged with its enforcement."

iii. Law No. 8975, dated 21.11.2002 "On the Treatment of Drinking Water Tax Bills as an Executive Title" (Art. 1), stipulates that, the Bill on Drinking Water Consumption, according to the model set by the Ministry of Finance, pursuant to Article 36 of the Law No. 7928, dated 27.4.1995 "On Value Added Tax", is an enforcement title and the Enforcement officer is responsible for its enforcement."

iv. Law No. 48/2014 "On Delayed Payments in Contractual and Commercial Obligations" (Art. 16) provides that: "1. Monetary obligations arising from commercial legal transactions that have not been paid within the relevant payment deadline, under this Act, except as provided in article 485 of the Civil Code, constitute an enforcement title and are enforced by the Enforcement officer, regardless of value, when: a) the creditor has delivered the goods or rendered the services under the contract and the law; and b) the debtor has not objected the obligation. 2. In such cases, the obligation together with the interest on arrears and the reimbursement of expenses for the repayment of the areas may be enforced in accordance with the provisions of the Code of Civil Procedure.'

v. Law No. 10385, dated on 24.02.2011 'On mediation for solving the disputes' (Art. 23(3) provides that the agreement by mediation made in accordance with the article 22 of the said law, is an enforcement title; Ect.

1.2 How are "civil and commercial" matters defined in your national legal order?

There is no explicit legal definition with regard to "civil matters" in the Albanian legal framework. However, the legal doctrine provides that a civil-legal relationship is a personal property or non-property relationship that is established between persons and is governed by the norms of the civil law.[12] Civil-legal relations arise from contracts or law. (Art. 419 of Albanian Civil Code (*hereinafter ACC*) The regulation of a defined relationship by civil-legal norms makes this relationship to have a civil legal-character.[13]

"Commercial matters" as well are not defined explicitly in the Albanian legislation. However, referring to article 1(4) of the law no. 9901, dated 14.04.2008 'On Entrepreneurs and commercial companies' (*Hereinafter the Company law*) which provides that: 'Unless it is provided otherwise, the court referred to in this law is the competent court in accordance with article 334 and 336 ACPC' and taking into consideration the scope of application of article 334 ACPC, it may be concluded that all the kind of disputes referred to in article 334 ACPC should be considered as commercial matters. Those 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

[12]A. Nuni, *E Drejtë Civile, Pjesa e përgjithshme*, Tiranë 2009, p. 76, para. 2.
[13]A. Kalia, *E Drejta Ndërkombëtare Private*, Tiranë 1997, p. 54, para.4.

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;
d) Disputes on the right to a trade name;
e) Violation of regulations on protection of competition;
f) Bankruptcy proceedings;
g) Disputes resulting from the dissolutions of companies;
h) Claims on a bill of exchange, cheque and other papers of this nature provided for by law.

Also, referring to article 348 ACPC which provides that, 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, we may conclude that these disputes are considered as commercial matters as well.

In the Albanian legal pracice, the identification of the type of dispute takes a particular importance mainly in determining the competence of the administrative and civil courts.

According to article 41§1 of the ACPC in the competence of the civil courts of first instance shall be adjudication of all civil and other disputes provided for in the ACPC and in other laws. While, according to article 7 of the law No. 49/2012 "*On administrative courts and adjudication of administrative disputes'*, aadministrative courts are competent to adjudicate: a) Disputes that arise from individual administrative acts, normative subordinate legal acts and public administrative contracts issued during the exercise of administrative activity by the public organ; b) Disputes that arise because of unlawful interference or failure to act by the public organ; c) Disputes of competences between various administrative organs in the cases provided by the Code of Administrative Procedures; ç) Disputes in the field of labour relations of civil servants, judicial civil servants, civil servants of prosecution offices, and state servants whose labour relations are governed by special arrangements, under the organic law. Public administration employees at courts or prosecution offices, whose labour relations are regulated by the Labour Code, are excluded from this rule. d) Requests submitted by administrative organs for the examination of administrative infringements to which the law provides deprivation of liberty up to 30 days as a type of administrative sentence for the infringer; dh) Requests submitted by infringers for the substitution of the administrative sentence of deprivation of liberty up to 30 days by a sentence of a fine.

According to the jurisprudence of the Albanian High Court[14], the correct identification of the nature of the dispute, either as civil or administrative, is very important for the correct determination of the subject-matter competence of the court. The court, in determining its subject-matter competence, refers to the *causa petendi* of the Claimant's submissions, both in the action and during the hearing, the nature of the dispute, and the legal status of the

[14] Judgment of the Civil Chamber of thh High Court No. 00-2018 – 951, dated 25.09.2018.

defendant/s, as well as makes the connection between the facts claimed by Claimant to have occurred and the rights or interests he claims to have been infringed.

1.3 Which bodies conform to the definition of "Courts and Tribunals" as provided for by the B IA under your domestic legal system?

For the purposes of the Brussels Regulation, courts or tribunals of the Member States should include courts or tribunals that exercise jurisdiction on matters falling within the scope of this Regulation (civil and commercial matters).

According to law no. 9877, dated 18.2.2008 "On Organization of the Judicial System in the Republic of Albania", as amended, the civil (including commercial matters) court system is organised in the following structures:

(i) District Courts (first instance);
(ii) Courts of Appeal (second instance); and
(iii) High Court (Civil Chamber).

The District Courts are organised in specialised sections for allocation of particular cases according to the subject matter of the action, such as: (i) section for civil disputes; (ii) section for family disputes; and (iii) section for commercial disputes.

1.4 Briefly present the types of domestic decisions (e.g. Judgements, Decrees, Decisions, Orders) which may be rendered/issued under your Member State's civil procedure.

Comment: *Briefly elaborate on the meaning and effects of these of types of decisions. Please note that the word "decision" is used as a generic and neutral term, e.g. in Slovenia, "decisions" rendered by the court shall take form either of a "judgment" (Slovene: "Sodba") or of a decree (Slovene: "Sklep"). "Civil procedure" is to be understood as any procedure so designated by domestic law. In addition, decisions not rendered in civil procedure, but having a civil character (e.g. decision on damages in criminal procedure), should also be included. Indicate which of these decisions may be considered enforcement titles. Additionally, please state what these decisions are called in the official language of your Member State. If enforcement titles are exhaustively enumerated by statute, please provide the citation to the exact article/paragraph of that statute and an English translation.*

According to article 171/a paragraph 3 of the ACPC, in the civil and commercial cases, the courts can issue orders ("urdhër") and judgments ("vendim"). Procedurally, judgements may be: interim, non-final or final. In terms of content, the judgments might be condemnatory, declaratory or constitutive.

Interim judgments (vendime të ndërmjetme) are those issued by the court during (in some cases even before) the hearing, upon party's request, in order to ensure the conduct of the hearing in accordance with the provisions of the ACPC (art. 125 ACPC). These judgments are not considered enforcement titles. Exeptionally, interim judgments on security measures and on the mandatory taking of evidences are considered enforcement titles according to article 510/(a) and 511(2) of the ACPC.

Non-final judgments (vendime jo-përfundimtare) are procedural judgments on the dismissal of the case, by which the court or the judge, in cases provided for in the ACPC, terminate the court civil proceedings without settling the case on the merits, as well as any other judgment, which without settling the case on the merits, terminates the initiated court proceeding. (art. 127 ACPC) These judgments are not enforcement titles.

Final judgments (vendime përfundimtare) are those that settle the case on the merits and, are rendered by the court at the end of the proceedings. (art. 126 ACPC) These judgments become enforcement titles only when two conditions are cumulatively meet:
First, the final judgment becomes irreversible/ peremptory. The judgment of the court becomes irreversible when: a) it cannot be appealed at the Appeal Court; 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 judgment (of the first instance) is upheld, is changed or the case is dismissed in the court of the second instance (appeal court). (art. 451 ACPC)
Second, the final judgment is condemnatory and not merely declaratory.

Exceptionally, even when the first condition is not met, under Article 510 (a) ACPC, a final judgment is an enforcement title when it is rendered on temporary enforcement. (Judgment on temprorary enforcement)

A final judgment can also be a consent judgment. A settlement between the parties becomes a court settlement once the judge approves it. This court settlement binds the parties the same as other judgments and it is an enforcement title under the same two conditions mentioned above.

Depending on its content, a final judgment may be:
Condemnatory judgment (vendim detyrimi): Are those whereby, in addition to determining the existence of a party's right and its infringement by the other party, the court orders the latter to serve the sanction provided by law (ordering to perform or not perform a certain action). These judgments become enforcement titles when rendered on temporary enforcement or become irreversible/peremptory.

Declaratory judgments (vendime njohje) are those through which the court recognizes or affirms the existence of a legal relationship, a right, a legal fact, or a document, such as the recognition of paternity. These judgments may not be enforced because they do not contain obligations, but may serve as a basis for the later issuance of a binding judgment. A final judgment of a declarative nature cannot be considered an enforcement title, since it does not meet one of the above-mentioned criteria that the final judgment should be condemnatory.

Constitutive judgments are those through which a particular legal relationship is created, amended or terminated. Examples of such judgments would be: judgment on the division of property in joint ownership, on the dissolution of marriage, on changing the maintenance obligation, etc. Those judgments may become enforcement titles.

Criminal judgments in the section on property rights: The Albanian Code of Criminal Procedure (here in after ACCP) (art. 61-68) provides for the concept of civil action in criminal proceedings. Under Article 61 of the ACCP, a person who has suffered damage from the criminal offense or his heirs may bring a civil action in criminal proceedings against the defendant or civil defendant to seek restitution and compensation of damage. The final

judgment of the criminal court may accept in whole or in part the civil action or dismiss it if finds it unfounded in law or evidence. In the first case, the court will decide in respect of certain property or non-property rights (assessable in money). This means that when the final criminal judgment becomes irreversible, it will be subje ct to enforcement (for the part of the obligations imposed on it) same as civil court judgments. (art. 510/b ACPC).

Orders (Urdhër): The orders can be taken by the court in order to ensure that the judicial process is conducted in compliance with the provisions of the ACPC. (art. 171/a ACPC) The orders are rarely applicable and they cannot become an enforcement title.

Enforcement Order: (Urdhër ekzekutimi): It is a court judgment that establishes the existence of an enforcement title capable of being enforced and consequently orders the enforcement authority to enforce the content of that enforcement title.

The list of enforcement titles is enumerated by article 510 and article 511 of the ACPC, already provided in point 1.1 above.

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the Court of Justice of the European Union for the purposes of B IA, which domestic decisions and instruments conform to these definitions?

Comment: *Please explain which domestic decisions and instruments are problematic in the light of the euro-autonomous definitions and why. Explain which decisions and instruments do not fall within the definitions. If you use English translations of domestic decisions, then please also provide the domestic term in brackets next to the translation, e.g. In Slovenia, condemnatory Judgements [Sodbe] issued in litigious proceedings…".*

For the purposes of the B IA, 'judgment' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court. For the purposes of Chapter III of B IA, 'judgment' includes provisional measures ordered by a court or tribunal which by virtue of B IA has jurisdiction as to the substance of the matter. In *Solo Kleinmotoren v Boch*, the CJEU defined a judgment, for the purpose of the B IA, as a decision emanating from a judicial body of a Member State, deciding on its own authority on the issues between the parties.

Thus, the concept excludes a court settlement, even if it was reached in a court of a Member State and brings legal proceedings to an end, since such settlements are essentially contractual in that their terms depend primarily on the parties' intention.[15]

It also extends to a judgment by which the court of a Member State declines jurisdiction by virtue of a jurisdiction clause, so that on recognition the court addressed is bound by the finding of the court of origin as to the validity of the clause.

Albanian judgments which are in conformity with the above definition are:

i. Final judgments of the civil courts on the merit of the case; (Vendime perfundimtare)

[15] Stone, Peter "Stone on Private International Law in the European Union" Forth Edition, (2018), para. 11.07, Published by Edward Elgar Publishing Limited.

ii. Civil courts judgments on provisional measures [except decisions on provisional measures issued from the courts that do not have jurisdiction/competence to adjudicate the merit of the case and those that are taken *ex parte*]; (Vendime per masa sigurimi)
iii. Civil court judgments on temporary enforcement; (Vendime me ekzekutim te perkohshem)
iv. Civil courts judgments on the part ordering costs of the proceedings; (Vendime civile te forms se prere ne pjesen qe urdheroje shpenzimet gjyqesore)
v. Criminal judgments in the section on property rights. (Vendime penale te forms se prere ne pjesen qe bejne fjale per te drejta pasurore)

A court settlement, under Albanian procedural law is equivalent to any other final judgment, while according to B IA it is equivalent with authentic instrument. [Article 59 of B IA 'A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments."]

According to the Albanian procedural law, judgments declining jurisdiction by virtue of a jurisdiction clause are non-final judgment and as it is explained in the point 1.4 above are not considered enforcement title. Therefore, we consider it problematic in the light of the euro-autonomous definitions, given that according to the euro definition that judgment becomes *res judicata* and is enforceable.[16]

Also, enforcement orders (*It is a court judgment that establishes the existence of an enforcement title capable of being enforced and consequently orders the enforcement authority to enforce the content of that enforcement title*) are not in conformity with the definition of B 1A, since these judgments are taken *ex parte*.

For the purpose of B IA, under Article 2 (c) 'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:
(i) relates to the signature and the content of the instrument; and
(ii) has been established by a public authority or other authority empowered for that purpose.

Albania Civil Procedure law provides very similar for official acts, but not for authentic acts. According to article 253 ACPC, "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 act is forged."

Also, article 254 ACPC provides that "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 act is forged."

[16] ECJ 15 November 2012, Case C-456/11 *Gothaer Allgemeine Versicherung and others,* ECLI:EU:C:2012:719.
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According to the Albanian legal order, in conformity with the definition of 'authentic instrument' according to CJEU are:

1. Notary documents containing monetary obligation; These documents are not directly enforceable, but it is the court, through issuing the enforcement order, the authority to decide if the documents should become enforceable or not. The enforcement order establishes the existence of an enforcement title capable of being enforced and consequently orders the enforcement authority to enforce the content of that enforcement title.
2. Documents of consular authorities abroad; Consular authorities are granted by RoA to authenticate some documents, same as notary in RoA. ect

1.6 Have the national courts of your Member State addressed any questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment"?

Taking into consideration that a preliminary ruling is a decision of the Court of Justice of the European Union (CJEU) on the interpretation of European Union law, in response to a request from a court or tribunal of a European Union Member State and knowing that Albania is not a member state of the EU, the answer is in the negative. Albanian courts cannot make request to the CJEU for interpretation of the EU law.

1.7 Please explain the level of judicial control (the "power of assessment") exerted by the courts when rendering default judgments in your Member State.

Comment: *The power of assessment may significantly vary. For instance, the courts may be barred from examination of the substance of the case or limited to checking compliance with mandatory rules of law.*

The Albanian legislation does not provide for default judgments. In a case of recognition of a North Macedonian court judgment rendered in default, the Appeal Court of Tirana has not recognized this judgement reasoning, *inter alia*, that such a judgement was given in default and this is not in conformity with the procedural principles of the Albanian legislation.[17]

According to article 179 of the ACPC, should the Claimant, 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 defence. Where the defendant has filed a statement of defence, he/she may request that the trial proceeds in absentia for the Claimant, and when the court considers that the defendant's request has been based on a legitimate cause, the court shall continue the trial in absentia for the Claimant. 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 Claimant shall not request that the trial proceeds in absentia.

After following the above rules, the Albanian civil courts are obliged to proceed with the hearing and issuing a final judgment. The court shall settle the dispute in conformity with the legal provisions and other effective norms that are applicable. The court shall make an accurate

[17] Decision of the Appeal Court of Tirana No. 7, dated 28.01.2019.

assessment of the facts and actions related to the dispute, not bound to the assessment proposed by the parties. (art. 16 (1) ACPC). The court grounds its decision on the evidences presented by the parties or by the counsels during the hearing. The court evaluates the evidences based on its inner conviction, formed by the consideration of the circumstances of the case in their entirety'. (art. 29(2) & art. 309 ACPC)

Exceptionally, with regard to the collection of evidences, article 285 of ACPC provides that, "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.'

Part 2: General aspects regarding the structure of Judgments

2.1 Which elements are comprised in the structure of a domestic (civil) Judgment in your legal order?

Comment: *A judgment normally contains an array of (necessary) information in separate constituent parts (elements), e.g. the title; the proclamation that the Court issues the Judgment in the name of the people; the Court and the judge rendering the judgment; Parties to the dispute; the Operative part; the Reasoning; the Legal instructions etc.*

The structure of a civil domestic judgment depends on whether it is an ordinary judgment or a judgment on small claims and it is defined by the article 310 of ACPC.

An ordinary civil judgment must contain three parts: (i) Introduction, (ii) Reasoning and (iii) Ordering/operative part.

In the ***introduction*** part of the judgment there must be mentioned:

1. The court which has adjudicated the case;
2. Name(s) of the judge(s) and the secretary;
3. The time and place of the issuance of the judgment;
4. The parties, indicating their identity and their position as Claimant, defendant, intervenors as well as their representatives;
5. The name of the prosecutor if he has participated;
6. *Petitum*;
7. The final claims of the parties;
8. The opinion of the prosecutor if he has participated in the hearing.

The ***reasoning*** part of the judgment must mention:

1. The circumstances of the case, as they have been assessed during the hearing, and the conclusions drawn by the court;
2. The evidence and reasons on which the judgment is based;
3. The legal provisions on which the judgment is based.

The ***ordering/operative*** part of the judgment must mention:

1. What the court has decided; 1/1. If the court imposes obligations for the parties, it should be specified their specific contents and that the judgment is enforceable by the Enforcement Officer.
2. Who is in charge of the court expenses;
3. The right of appeal and the time limit for its submission. (art. 310 ACPC)

A judgment on small claims (small claims are considered the claims up to LEK 150,000 and that arise from contractual relationship) should contain only two parts:

(i) Introduction part
(ii) Operative part.

If the parties, within three days of notification of this judgment, notify the court in writing that they will appeal the above judgment, the court shall reason the judgment and notify it to the parties. (art. 310/II (3) ACPC)

2.2 Is the structure of a judgement prescribed by law or court rules or developed in court practice (tradition or custom convention)?

Comment: *If applicable, please provide the citation to the exact article/paragraph of the rule and an English translation.*

As explained above, the form and the structure of a civil judgement are prescribed by articles 308(1) and 310 ACPC.

Article 310 of ACPC provides that: "*The judgment must contain the introduction, the reasoning part and the ordering part. I. In the introduction of the judgment must be mentioned: 1. the court which has adjudicate the case; 2. the court member and the secretary; 3. the time and place of the issuance of the judgment; 4. the parties, indicating their identity and their position as Claimant, defendant, intervenors as well as their representatives; 5. the name of the counsel, if he has participated; 6. the object of the action (petitium); 7. the final claims of the parties; 8. the opinion of the prosecutor if he has participated; II. In the reasoning part must be mentioned: 1. the circumstances of the case, as they have been assessed during the hearing, and the conclusions drawn by the court; 2. the evidence and reasons on which the judgment is based; 3. the legal provisions on which the judgment is based. The court judgment for claims worth up to 150 000 lekë should contain an introduction and operative part, under paragraph 1 of this Article. If the parties, within three days of notification of this judgment, notify the court in writing that they will appeal the judgment, the court shall reason the judgment and notify the parties. III. In the operative part, among others must be mentioned: 1. what has the court decided; 1/1. If the court imposes obligations for the parties, their specific content and that the decision is enforceable by Enforcement Officer. 2. who is in charge of the court expenses; 3. the right of appeal and the time limit for its submission.*

Article 308(1) of ACPC provides that: *'The judgment must be signed by all court members that have participated in the issuance of the judgment. A judge, whose opinion has been in the minority shall inscribe the word "against" on the judgment and then sign it'.*

According to the jurisprudence of the Constitutional Court, a judgment in any case must be logical, organized in form and clear in substance. In its entirety it should be regarded as a unity,

in which the constituent parts are closely interconnected. They must serve and function with each other. The arguments of the reasoning part must be well-founded, logically linked and respect the rules and laws of righteous thought. These arguments should also be sufficient to support and accept the operative part of the judgment. On the other hand, the operative part of the judgment must be a natural result of the conclusions reached in the reasoning part. It is a synthesis of these conclusions and as such can in no way contradict them. [18]

2.3 How standardised (regarding form and structure) do you consider judgments from your Member State to be (e.g. inadequately; adequately; standardised, although exceptions can be found)?

Comment: *If the law regulates this issue, then it is expected that judgments are standardised. However, if certain courts tend to disregard standards or if standards are too loosely defined, then please elaborate. If your Member State has multilevel governance structures (e.g. federalisation; autonomous regions) please elaborate if the different governance structures also apply different standards.*

Based on the fact that the criterias of the form and structure of the judgments are expressly provided for in the law, the judgments of the Albanian courts are standardized. Referring to the case law, in my assessment these criteria are adequately applied.

2.4 How the different elements of the Judgment separated from one another are (e.g. headline, outline point etc.)?

Usually the different elements of the Judgment are separated in headlines written in bold and/or in capital letters. However, the formatting is left to the judges, so not every judgment looks the same.

2.5 If courts, other than courts of first instance, may issue enforceable judgments, how does the structure of such judgments differ from judgments issued by the courts of first instance?

Comment: *The question comes into play especially in cases where, after recourse, appellate and other courts may modify first instance judgments or decide on the claim independently. In addition to general observations, please focus on the operating part, e.g. does it make reference to first instance judgements, how does it uphold or dismiss those judgements?*

In principle, Albanian appelate courts rule on the substance of the case itself (***meritorious).*** Under Article 466 (b) of the ACPC, the court of appeal can decide to modify the judgment of the first instance court. In these cases, the judgment of the court of appeal has the same structure as the judgment of the first instance court, whereas its operative part first provides that the judgment of the court of first instance is modified and then what is the judgment of the court of appeal on the dispute. The other elements of the operative part of the judgment are the same as the judgment of the first instance court. Respectively, if the court imposes obligations for the parties, it is provided their specific content and that the judgment is enforceable by Enforcement Officer. It is also provided who is in charge of the court expenses and the right of appeal

[18] Judgment of the Consitutional Court (here in after JCC) No. 33 dated 08.12.2005.

(recourse) and the time limit for its submission. In such cases, the judgment of the Court of Appeal is going to be the enforceable judgment and not the judgment of the first instance, which did not become an irreversible judgment (consequently did not become an enforcement title).

2.6 How does the assertion of a counterclaim affect the structure of the Judgment?

Comment: *In addition, explain when a counterclaim can be entertained in the same proceedings and be decided in a single Judgment (if possible).*

The defendant is entitled to submit a counterclaim if the *petitium* of the counterclaim is related to that of the claim or if between them (claim and counterclaim) a mutual compensation is possible. The counterclaim may be submitted as long as the order for scheduling the court hearing is not issued (art. 158/c ACPC) and the court should take an interim judgement to accept it or not.

In case the court accepts adjudicating the counterclaim, this does not affect fundamentally the structure of the judgment (three parts of it), but it affects slightly the content of each part of the judgment. So, in the introduction part of the judgment, the legal identification of the parties will change becoming: The Claimant/counter Defendant and the Defendant/counterclaimant. Also, in addition to the *petitium* of the action (the object of the action) it must be indicated even the *petitum* of the counterclaim.

In the reasoning part, the court should assess facts and legal arguments of the claim and those of the counterclaim.

The operative part of the judgment, will contain each parties' obligations for each claim (claim and counterclaim) separately.

2.7 Does the Judgment include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant? Conversely, does the judgment contain a specification of the time-period within which the judgment is not to be enforced? Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable?

Comment (2.7): *If applicable, please also explain what happens if the court does not include the above time period(s). If applicable, how would the court, acting as a court of the Member State addressed, deal with a situation where a judgment is no longer enforceable after the limitation period for enforcement has expired, and this time period was not specified by the court in the Member State of origin, either because there is no obligation for the court to specify the period or because the court unintentionally omitted the specification.?*

The Albanian judgments do not contain any time-period within which the obligation should be fulfilled voluntarily by the debtor and it does not contain either a period of time within which the judgment should not be enforced. But, the enforcement procedure of the judgment follows two stages: (1) Voluntarily enforcement and (2) Mandatory enforcement.

The notice of voluntarily enforcement is provided explicitly by articles 517 -519 ACPC. At the commencement of the enforcement of a judgment, the Enforcement officer issues to the debtor a notice for voluntarily enforcement of the obligation contained within the enforcement

order designating for this purpose a timeframe of: (i) five days when the judgment involves a salary or an order for maintenance and (ii) ten days for all other judgments.

The mandatory enforcement cannot start before the time limits provided in article 517 of the ACPC above (time frame for voluntarily enforcement) have expired, unless it exists a danger that with the expiry of the time limit the enforcement shall become impossible. In such a case the Enforcement officer can start immediately with the mandatory enforcement. (Art. 519 ACPC)

According to article 310(3) ACPC, albanian judgments contains the right to appeal and the time at which this right can be exercised.

Albanian law does not explicitly provide for a statute of limitations for enforcement of a judgment, which is an enforcement title. But, referring to article 113 of the Albanian Civil Code, indirectly, it is understood that the enforcement of a judgments is statute-barred in time depending on the lawsuits for which they have been granted. Requirements for the mandatory enforcement of the judgment that are related to lawsuits, for which the statute of limitation does not apply, do not lapse. (n. 113 (2) CC)

2.8 What personal information must be specified in the Judgment for the purposes of identifying the Parties to the dispute?

Comment: *For example, in Slovenia, the Judgment will list the Parties' name and surname, residence and Unique Personal Identification Number (so-called "EMŠO"). This number is provided to each citizen of Slovenia and is also a feature in other countries of the former Yugoslavia. The information is stated in the Introduction to the judgment and is usually not repeated in other parts of the judgment.*

The judgment specifies the parties' name and surname, paternity and/or motherhood, place of birth, residence, nationality and Personal Identification Number or the number of the identification document (passport). In the case of legal entities that are registered in the commercial register, the commercial register number and its site must be entered. The information is written in the introduction part of the judgment and is not repeated in other parts of the judgment.

2.9 How do courts indicate the amount in dispute?

Comment: *Please elaborate how this amount is specified (if this information is specified), especially in cases where amendments to claims occur during proceedings.*

The value of the claim is assessed by the Claimant at the moment of bringing the action to the court according to the rules provided in articles 65-70 of the ACPC. The *petitium* and *causam petendi* should be taken into consideration in determining the value of the claim. In the case of a claim of an indefinable value, their value will be determined at the end of the hearing session.

Claims presented in the same process against the same person should be put together including matured interest, expenses and claimed damages. When the fulfilment of an obligation by shares is requested by several persons or against several persons, the value of the claim will be determined by the entire obligation. (art. 65 ACPC)

The value of the claim related to the existence, validity or dissolution of a legal obligation relationship is determined on basis of that part of the *ratio* which is under dispute. If the lease contract of immovable objects has terminated, the value is determined on the basis of the amount of the 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. (art. 66 ACPC)

In case of a claim for a periodic maintenance obligation, when the title is objected, the value is determined on the basis of the total amount which should be given over two years. In cases related to life rents, when the 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. (art. 67 ACPC)

When a sum of money or a movable object is requested, the value is determined on the basis of the indicated amount or, of the declared value by the Claimant. 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 defence. (art. 68 ACPC)

In the case of an action for revindication of an immovable property or rights *in rem* thereon, the value of the claim shall be determined by the market value of the property or of the rights claimed. (art. 69 ACPC)

The value of the claim objecting the mandatory enforcement is determined by the claimed credit for which the claim is filed. The value of the claim of a third person who objects the mandatory enforcement depends on the value of the objects for which the objection is made. (art. 70 ACPC).

The claimant should make the calculation and pay the court's fee at the moment of initiating the process. If the value of the claim will be considered unreasonable by the court, the latter has right to indicate another value. Special appeal may be submitted due to the wrong assessment of the amount on dispute. (art. 65 & 110 ACPC)

If the claimant makes a request for amendment of the *petitium* of the claim (when it is an amount of money) and the court accepts its request, then, the court request to the party to pay the court's fee for the difference required. If the value of the claim is reduced the difference is not returned to the claimant.

The initial amount in dispute (the amount claimed by the Claimant) is stated in the introduction and reasoning parts of the judgment. If during the hearing the claimant amends the *petitium*, this fact is specified in the reasoning part of the judgment. In the operative part it will be shown the amount in dispute as determined by the court.

2.10 How do courts indicate the underlying legal relationship (legal assessment of the dispute), if this circumstance bears further relevance, e.g. in enforcement proceedings?

Comment: *Take for example § 850f of the German ZPO, where enforcement is sought against earned income (wage) of the debtor. The law imposes limitations to the scope of the attachable part of the income. However, these limitations may be disregarded to an extent, if enforcement is pursued for a claim arising from an intentionally committed tort. The execution court must therefore be able to identify the legal relationship (intentional tort). Similar examples might include the indication of maintenance or annuity by way of damages.*

According to the Albanian procedural law, the nature of the legal relationship does not have any bearing on the enforcement procedure.

Exceptionally, in the case of actions that may be filed at the enforcement stage, the law provides for certain special arrangements where the enforcement title is an act of granting bank loans or an act of granting loans from non-bank financial institutions.

In the process initiated by an action for invalidity of an enforcement title, the court may decide to suspend the enforcement of the judgement with or without a guarantee. When the enforcement title is an act of granting bank loans or an act of granting loans from non-banking financial institutions, the court may decide to suspend the enforcement of judgment, only with a guarantee and for a period no longer than 3 months, except when the court, within this term, takes a final judgment to accept the claim. When the 3 months term expires or when the court, within this term, decides to reject the claim or to dismiss the hearing of the case, the measure to suspend the enforcement of the judgement is considered as not in force. The court shall not decide on the suspension of the enforcement of the judgment when the debtor claims that the obligation imposed on the enforcement title, which is an act of 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 within 5 days. Against this judgment a special appeal may be submitted. (art. 609 ACPC)

Against the actions of an Enforcement officer carried out in contravention of the procedures provided by the ACPC and against the refusal of the Enforcement officer to carry out actions imposed by law, the parties can make an appeal to the court that enforces the judgment, within 5 days from the day of performance of the action or refusal to perform, 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. The appeal against the actions or refusal to act of the Enforcement officer shall not suspend enforcement of the judgment, unless the court decides otherwise. When the enforcement title is an act of granting bank loans or an act of granting loans from non-bank financial institutions and the court has decided to suspend the enforcement of the judgment, the suspension measure is considered to have ceased having effect within 20 days from the moment of granting the judgment on suspension. (art. 610 ACPC)

2.11 **Can the Claimant seek interim declaratory relief and what effects (if any) are attributed to the decision on this claim? How is the decision specified in the Judgment?**

The Albanian legal order does not provide for interim declaratory relief.

The claimant may be granted interim relief if their claim is substantiated and the claimant can demonstrate that failure to grant interim relief may prevent the satisfaction of his claim in part or in whole. The judgment on interim measures is an enforcemenet title.

According to the Unified Judgment of the Albanian High Court No. 10/2004, in no case may an injunction be provided by a provisional measure ordering the defendant to carry out what the Claimant seeks through the action and which should be returned by the Defendant. In other words, the provisional measure on securing the claim, which is decided by the court, does not make sense to be the same as ordering the fulfillment of the claim of the claimant party expressed in the object of the claim.[19] According to the said Unified Judgment such a measure imposed by the court, which consists in restoring an unilaterally or arbitrarily terminated relationship, would be considered lawful and would be included in other appropriate measures to secure the lawsuit, if any, it was provided for in a explicit manner in law and /or would result from the very nature of the legal relationship (of the contract entered into between the parties). Such are e.g. several contracts for the supply of raw materials or energy, interdependent, that ensure the continuous and uninterrupted operation of an industrial activity, of a certain technological process, of an activity determined for the protection of life and health of people, etc., the termination of which would cause incalculable and irreparable damage, major destruction or catastrophe.

One of the cases provided explicitly by the law, might be article 187(2) of the Law on Industrial Property No 9947 dated 7.07. 2008 (as amended) which provides that: 'In ordering provisional measures, the court may: a) impede imminent violations or violations that have begun to be committed; b) prohibit the entry of the goods into the channels of commerce; c) order the preservation of relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto; ç) confiscate, take out of circulation or take under safe-keeping, for the period of the civil procedure, the objects that constitute a violation of the rights according to this law; d) order, in the case of an infringement committed on a commercial scale and if the injured party demonstrates circumstances likely to endanger the recovery of damages, the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

However, the court does not specify in its final judgment what is to happen with interim relief.

[19] Unified Judgment of the Joint Chambers of the Albanian High Court No. 10/2004.

2.12 What kinds of decisions can a court issue in regular litigation proceedings?

Comment: *For example, in certain Member States, the court may decide on procedural issues (e.g. admission of evidence; modification of claim) with a "decree" and a "Judgment" on the merits of the case. Provisional and protective measures may or may not be tied to the proceedings.*

Albanian courts decide on procedural issues through *interim judgments* (vendime te ndermjeteme) and *non-final judgments*, and on merit of the case by *final judgments* (vendime perfundimtare).

Interim judgments are those issued by the court during (in some cases even before) the hearing, upon party's request, in order to ensure the conduct of the hearing in accordance with the provisions of the ACPC (art. 125 ACPC). These judgments are not considered enforcement titles. Exeptionally, interim judgments on security measures and on the mandatory taking of evidences are considered enforcement titles according to article 510/(a) and 511(2) of the ACPC. Some kind of the interim judgments that can be taken during the hearing are those on:

a) admission of evidence;
b) modification of claim;
c) admission of counterclaim;
d) admission of intervention of third person;
e) security measures (claims and evidences);
f) ordering fines;
g) joinder the proceedings;
h) dividing the claims;
i) appointment of an expert;
j) suspending the hearing;
k) reinstatement of a request;
l) replacement of the parties;
m) procedural succession etc.

Non-final judgments (vendime jo-përfundimtare) are procedural judgments on the dismissal of the case, by which the court or the judge, in cases provided for in the ACPC, terminate the court civil proceedings without settling the case on the merits, as well as any other judgment, which without settling the case on the merits, terminates the initiated court proceeding. (art. 127 ACPC) These judgments are not enforcement titles. Exemples: judgments on jurisdiction; judgments on dismissing the case.

Final judgments (vendime përfundimtare) are those that settle the case on the merits and, are rendered by the court at the end of the proceedings. (art. 126 ACPC) These judgments may become enforcement titles.

2.13 How are Judgments drafted when (if) they contain a "decision" on issues other than the merits of the case?

Comment: *Such decisions can, for example, pertain to the modification of a claim, withdrawal of a claim, joinder of parties, joinder of proceedings etc.*

Usually the judgments do not contain the 'decisions' issued during the hearing, exept the decision on cost proceedings. It is the court record, the procedural act that should indicate any single procedural action happening during the hearing (art. 118 of ACPC).

Exceptionally, judgments contain those decision that affects their operative part of it. Examples: decision on admission of counterclaims, on joinder of proceedings, modification of claim etc. However, even in these latter cases the structure of the judgment remains unchanged, except that ancillary resolutions are included in the operative part of the final judgment and in some cases even in the reasoning part of the judgment (ex. interim judgments on the intervention of the third party).

2.13.1 How does this affect the operative part and/or the reasoning?

The answer is provided in the point 2.13 above.

2.13.2 Which decisions (2.12) can be incorporated into the judgment?

The answer is provided in the point 2.13 above

2.13.3 Can provisional and protective measures form part of a Judgment or can they only be issued separately?

Provisional and protective measures are issued separately.

Exceptionally, according to article 212 of the ACPC, when the court accepts the claim, it decides also the legitimisation of the security of the claim (already granted with a decision on security measure). When sequestration (preventive) has been decided as a provisional measure, it becomes executive sequestration after the judgment becomes irreversible. Legitimisation of the security of the claim becomes part of the judgment.

Part 3: Special aspects regarding the operative part

3.1 What does the operative part communicate?

The operative part must communicate:

a. What the court has decided;
b. If the court imposes obligations for the parties, their specific content and that the judgment is enforceable by Enforcement Officer. (This is called Enforcement order)
c. Who is in charge of court costs;
d. The right of appeal and the time limit for submitting it. (art. 310/III ACPC)

3.1.1 Must the operative part contain a threat of enforcement?

Comment: *A threat of enforcement is to be understood as a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment.*

No. The operative part does not contain any threat of enforcement. It contains the information about the right of appeal and the time limit for submitting it (art. 310/III ACPC)

3.1.2 Must the operative part include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance)?

If the debtor's obligation to perform is found to be due and the Claimant requested performance of the obligation, the court, in the operative part of the judgment, will *first* rule on the acceptance of the claim and *secondly*, will order the debtor to pay in favour of the Claimant the corresponding amount, without issuing a declaratory relief.

3.1.3 Is the specification of the debtor's obligation finalized by the court or is it left to later procedures/authorities?

The ACPC expressly provides that if the court imposes obligations to the parties, it must communicate the specific content of the obligation in the operative part of the judgment (art. 310, paragraph III, 1/1).

3.1.4 How is the operative part drafted in a case of a prohibitory injunction (German: "Unterlassungsklage")?

In case of a prohibitory injunction the operative part firstly communicates the admission from the court of the request for the prohibitory injunction and thereafter establishes the respective injunction by expressly ordering the prohibition of the actions.

Exemple (Judgment of the District Court of Tirana No. 1594, dated 03.03.2009:
"The Court decides:

- Partial acceptance of the Claimant's claim L AG.
- The obligation of the Defendant, company "N" Shpk, not to use the name "L" in its products that it currently produces or will produce in the future.
- Obligation of the Defendant, company "N", to compensate the Claimant, Company "L AG", as a result of violation of the right of ownership over the registered trademark "L", to the extent of
  1. Profit of the Company "N" for the product L beer in 2004, in the amount of 307,280 ALL;
  2. Total court costs in the amount of 4,474 Euros and 300,000 ALL.
- The dismissal of the lawsuit for the rest of its object."

3.1.5 If applicable, how is the operative part drafted in an interim judgment?

Comment: *Should a claim be in dispute both on its merits and as regards its amount, the court may take a (preliminary) decision on the merits. An interim judgement in the context of the above question should therefore be understood as a judgement on the merits (basis, grounds, liability) of the claim (e.g. a court issues a judgement regarding the liability of a defendant for tort, but leaves the amount of the damages to be decided later in a "final" judgement).*

The Albanian legal order does not provide for interim judgments.

Exceptionally, the ACPC foresees such a judgment in the proceeding of an action for the division of property on co-ownership. (art. 369-374 ACPC). This proceeding should be conducted in two stages. The judgment of the first stage of this proceeding is an interim judgment and the structure of the operative part of it should be the same as of the final judgment. See the point 5.4 below with regard to this special judgment.

3.1.6 If applicable, how is the operative part drafted in an interlocutory judgment?

Comment: *Within the context of the question, an interlocutory judgement refers to a temporary decision regulating the matter of the dispute. Take for example the French "Ordonnance de référé«, which is a provisional decision made on the application of one party, the other one being there or having been called, in cases where the power to order immediately the necessary measures is vested to a judge who is not called to decide the whole case.*

The Albanian legal order does not provide for interlocutory judgments.

3.1.7 How is the operative part drafted in the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim?

According to the Albanian legal order alternative claims are applicable. This is a result from the material law mechanism of *facultas alternativa*. For example, in a claim the creditor requests either the execution in kind of the obligation when this has not been executed by the debtor (n. 476 (2) (a) KC) or the compensation of the damage caused by the non-execution of the obligation (n. 476 (2) (b) KC)

However, the Albanian legal order does not provide for judgment on alternative obligatons, and therefore it is the defendant during the procedure or the court who make th choice bewteen alternatives before issuing the judgment. According to the case law, a judgment must contain a known, required and precise obligation, which is not related to the fulfillment of certain deadlines and, above all, unconditional due to other circumstances or other mutual obligations."[20] Therefore, there is no judgment that contains alternative obligations.

The Albanian legal practice prefers to avoid alternatives claims (choosing one of the other before filing the claim), and as a matter of fact, there is very few case law to show the contrary[21].

[20] Unified Judgment of the Albanian High Court No 980 dated 29.09.2000
[21] Judgment No. 6187 dated 09.07.2018 of the Distrcit Court of Tirana

Even judges prefer to orient the parties to specify their claims in order to not leave the choice to the discretion of the court.

3.1.8 How is the operative part drafted when a claim is wholly or partially dismissed (on substantive grounds)?

Comment: *For the purposes of the question, a "dismissal" refers to the situation where a claim appears to be without justification, either in and of itself or as the result of an objection lodged by the defendant (German: Klageabweisung).*

When a claim is wholly dismissed, the operative part communicates the *"dismissal of the claim" (vendim per rrezim padie).* When a claim is partially dismissed the operative part communicates *"the partially acceptance of the claim"* (*pranim i pjesshem i padise*) by specifying the claims which are accepted and *"dismissal of the other parts of the claim".*

Example: The operative part of the judgment of the Tirana District Court, No. 9268, dated on 30.10.2008.
'The court decides:

- Partial admission of the claim of the Claimant 'the Company "Sh M" ltd.
- Obligation of the Defendant 'UT' to pay to the Claimant 'Sh M' ltd the amount of 2,059,660 ALL, which it is related to the final statement of works for the reconstruction of the building of the Faculty of Foreign Languages.
- Obligation of the Defendant 'UT' to unlock the 5% guarantee of the works value of the object in the amount of 489,244 ALL.
- Cessation of adjudication (dismissal) of the case for the rest of the claim.'

3.1.9 How is the operative part drafted when a claim is wholly or partially rejected (on formal/procedural grounds)?

Comment*: For the purposes of the question, a "rejection" refers to the situation where the court finds it cannot entertain a claim due to formal/procedural reasons (or lack thereof), e.g. if it lacks jurisdiction or if the prescribed time for filing the action has elapsed.*

With regard to the drafting of the operative part of the judgment, it does not make any substantial difference whether the rejection is on procedural grounds or on the merits. In case the court finds it lacks jurisdiction, the operative part of the judgment communicates that the case falls out of the civil judicial jurisdiction and therefore the case is rejected (*vendim per pushim gjykimi*).

In case the court finds it lacks jurisdiction on a part of the claim, then it will divide the claims. The court will issue a judgment, the operative part of which will communicate that the claim "x" falls out of the civil judicial jurisdiction and the case on that claim is rejected. Then the court will continue the process for the rest of the claim for which the court has jurisdiction. At the end of the hearing the court will issue a judgment referring only to the claim for which the court has jurisdiction. This judgment will be on the merit of the dispute.

Example of an operative part of a judgment on separation of a claim:
"The court decides:
-Separation of the claim on "Partial invalidity of the inheritance certificate of the heirs of the testators of DhP and UM with no. 18, dated 12.09.1994 before the notary AM in favor of the Respondent KP as sole heirs", from other claims of the action.
-The announcement of the subject-matter incompetence of the District Court of Vlora for adjudicating this claim.
- Sending this claim for adjudication to the Administrative Court of the First instance in Vlora as a competent court from the point of view of subject-matter competence."[22]

3.1.10 How is the operative part drafted if the debtor invokes set-off? Provide an example.

Comment: *In certain jurisdiction, set-off (compensation invoked in proceedings) requires the operative part to specify how the claim and counter-claim are extinguished and to what extent. This may, for instance, be done by specifying the amount of both claims and declaring the amount to be compensated.*

In cases where the debtor invokes set-off, the final judgement may eventually decide, among other, acceptance of the claim and/or counterclaim, by specifying the amount of both claims and declaring the amount to be compensated. Example: The court decides to uphold the claim, therefore A should pay to B the amount of LEK 100; The court decides to uphold the counterclaim, therefore B should pay to A the amount of LEK 80; Eventually as a result of compensation, A must pay to B the amount of LEK 20.

3.2 Are there specifications pertaining to the structure and substance of the operative part of the Judgment in your national legal system – set out by law or court rules or developed in court practice? If so, please provide an English translation of the relevant provisions.

Article 310, paragraph III of ACPC provides that:

"The operative part, among others must communicate:

1. What the court has decided;
2. If the court imposes obligations for the parties, their specific content and that the decision is enforceable by Enforcement officer; (Enforcement order)
3. Who is in charge for the court expenses;
4. The right of appeal and the time limit for its submission."

3.3 Does the operative part contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)?

No, the operative part does not contain element from or references to the reasoning part of the judgement.

[22] Judgment of District Court of Vlora No. 2047, dated 12.03.2015.

3.4 Elaborate on the wording used in your national legal system, mandating the debtor to perform.

Comment: *For instance, in Slovenia, the debtor is not specifically "ordered" to perform by the wording of the operative part, since the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Would you find such wording problematic?*

In Albania the debtor is specifically ordered to perform by the wording of the operative part. It is usually formulated *"the obligation of the Defendant to pay in favour of the Claimant"*. It is clearly understood that this 'liability' means a duty to perform and the practice did not find it problematic.

3.5 If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-) performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

Albanian legal order doe not provide for judgments that contains conditional obligations. According to a Unified Judgment of the Albanian High Court, a judgment must contain a known, required and precise obligation, which is not related to the fulfillment of certain deadlines and, above all, unconditional due to other circumstances or other mutual obligations."[23]

3.6 How are the interest rates specified and phrased in a judgment ordering payment?

Comment: *Please provide a typical wording and the legal basis – not concerning the merits but concerning the requirement in procedural law as to how to draft the operative part.*

In a judgement ordering payment the court shall provide (upon the party request) for the interest rates usually specifying the amount of interests calculated by an expert during the trial and the period calculated from a specific date to the date of submission of the expert report and setting a daily interest rate from that date to the date of enforcement of the judgment. In some cases, the interest rates are specified by referring to the interest rate published by the Central Bank of Albania on bank deposits or in the interest rates provided by the law, such as the legislation in force that regulates late payments in contractual and the commercial obligations.

When the enforcement title, for which an enforcement 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 (art. 511/ç ACPC).

Example: "The court decides:

- …..Obligation of the Defendant "C 2002" Ltd' to settle the payment of legal interest in favor of the Defendant for the period 15.10.2012 to 15.12.2014 in the amount of 164.616. (one hundred and sixty-four thousand six hundred sixteen) ALL.

[23] Unified Judgment of the Albanian High Court No 980 dated 29.09.2000

- Obligation of the Defendant 'The company "C 2002" ltd' to pay in favor of the Claimant the sum of 2,568 (two thousand five hundred and sixty-eight) ALL per day from 15.12.2014 (date of submitting the expert's report) until the enforcement of the judgment….."[24]

3.7 Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Comment: *Please elaborate on the second part of the question only if such a joinder of claims is admissible. Please accompany your answer by providing typical (abstracted) examples of operative parts in situations where the debtor is ordered to pay an amount of money; when he is ordered to perform an action; when a prohibitory injunction is issued against him; when he is ordered to hand over moveable property. Additionally, formulate abstracted examples of declaratory relief (including negative declaratory relief) and actions for the creation, modification or cancellation of legal relationships).*

Example 1 (imposing different obligations on the debtor/pay money)

The operative part of the judgment of the Tirana District Court, No. 9268, dated on 30.10.2008.

'The court decides:

- Partial admission of the claim of the Claimant 'the Company "Sh M" ltd.
- Obligation of the Defendant 'UT' to pay to the Claimant 'Sh M' ltd the amount of 2,059,660 ALL, which it is related to the final statement of works for the reconstruction of the building of the Faculty of Foreign Languages.
- Obligation of the Defendant 'UT' to unlock the 5% guarantee of the works value of the object in the amount of 489,244 ALL.
- Cessation of adjudication (dismissal) of the case for the rest of the claim.'

Example 2 (imposing different relief soughts)

The operative part of the judgment of the Tirana District Court, No. 2325, dated on 23.03.2015.

'The court decides:

- Admission of the claim filed by the Claimant, B M.
- Obligation of the Defendant 'the Company "C 2002" Ltd' to make payment of the unpaid rent in favor of the Claimant under Rental Contract no. 3841 rep and no. 671 Kol on 15.12.2010 on 15.10.2012 until 15.12.2014 in the amount of 2.080.000 (two million and eighty thousand) ALL.
- Dissolution of Lease Contract Nr. 3841 rep and no. 671 dated 15.12.2010 due to the non-fulfillment of the obligation by the Defendant and the adjustment of consequences by returning the parties to the previous situation, which consists in the obligation of the Defendant 'the Company "C 2002" ltd', to hand over to the Claimant, B M a surface of 1500 m2 of land that are located in Vaqarr Tirana, in ZK 3712, vol 11 page 214.

[24] Judgment of the Tirana District Court, No. 2325, dated on 23.03.2015.

- Obligation of the Defendant 'The Company "C 2002" Ltd' to settle the payment of legal interest in favor of the Defendant for the period 15.10.2012 to 15.12.2014 in the amount of 164.616. (one hundred and sixty-four thousand six hundred sixteen) ALL.
- Obligation of the Defendant 'The company "C 2002" ltd' to pay in favor of the Claimant the sum of 2,568 (two thousand five hundred and sixty-eight) ALL per day from 15.12.2014 (date of submitting the expert's report) until the enforcement of the judgment.
- The Defendant is in charge of the legal costs.'

Example 3 The operative part of the interim judgment (on security measure) of the Tirana District Court, No. 5059 dated on 05.02.2016 "On security claim":
'The court decides:

- Admission of the application;
- Prohibition of change of ownership of shares of defendants AS and AB in 'the company T CH S.A', as well as the suspension of the rights arising therefrom until the end of the hearing.
- Claimant is obliged to deposit a bank guarantee in the amount of ALL 30,000,000 (thirty million) on account of this process under No. 5059 Act, dated 18.09.2016.'

Example 4 The operative part of the judgment of the Tirana District Court, No. 2640, dated 21.10.2008:
'The court decides:

- Admission of the claim.
- Obligation of Defendants/counterclaimant, ESSh and GXhSh, to vacate and hand over to the Claimant/Counter defendant, FA a 92.26 m2 plot of land located in the Grace village of Devoll District, which falls within the boundaries of the map of property registration no. 395 / 7 owned by FA, which in the outline of the expert expertise act reflects 50.10 m2 of unpainted, 42.16 m2 of yellow color, of which 29 m2 occupied by illegal construction.
- Obligation of the Defendants/counterclaimant to cease the infringement on the property of the Claimant/Counter defendant, FA, crossing the 50.49 m2 land border on the public road, reflected in blue in the sketch of the expert report, and not to repeat with in the future.
- Dismissal of the counterclaim of the Defendants, ESh and DhSh, Claimant/counter defendant, FA, with object the obligation to recognize the ownership, as unfounded. The sketch of the expert act of expert RP is an integral part of this judgment.

Example 5 (judgment on recognition as inheritor and surrendering the inhereted property)
The operative part of the Judgment of the Gjirokastwr First Instance Court No. 588, dated 20.06.2011:
"The court decides:

- Admission of the claim.
- Obligation of the Defendant EX to recognize the Claimant SX as inheritor of NX, in 1/7 part of the inherited property.
- Obligation of the Defendant EX to surrender the 1/7 of the inhereted property to the Clamaiant SX.
- The defendant is in charge of the legal costs.".

Example 6 (Judgment on division the joint property; Interim judgment of the first phase)
Judgment of Fier District Court, No. None, dated 14.10.2019:
'The court has decided:

- 'Allowing division, defining the co-owners, the object to be divided, as well as belonging parts of each of them, as follows: *The property with extremities: No.4/21 + 1-1, Vol. 6, Pg.240, ZK 2890, the property is apartment, surface 44 m2 with cowner: i) EQ, in 2/4 parts; ii) PA in 1/4 parts; iii) BQ in 1/4 parts;*
- *A car with licence number AA391GE, Permission licence FRF0251416 with cowner: i) EQ, in 1/3parts; ii) PA in 1/3 parts; iii) BQ in 1/3 parts;*
- *Every single revenue in the Bank acccounts: a) No 110034626C LIDCLALLAV, b) No 110034626TIMDEPALL and c) Treasures bond No110034626CLTB1YALLS6;*
- *Any revenue in the account of Mr. BQ, with clinet No 110034626 with cownwer: i) EQ in 2/4 parts ii) PA in 1/4 parts; iii) BQ in 1/4 parts.'*

Example 7 (Interim judgment on division of joint property- Judgment of the second phase)
Judgment of Tirana District Court No. 8202, dated 19.11.2007:
"The Court decides:

- *Admission of the claim;*
- *Division of the land surface of 7675 m² sited in Tirana, in teh south part of the Student City, under cadaster numebr registration 1472, dated.13.04.1995 between parties of the procces.*
- *Properti, object of the division is left to the Defendants DH, LH, PH, HB, AB NB, AA, BZ, EB JA, MA.*
- *Claimants, inehreiter of AG: BG, GG, EG, LG, FG will take 6/30 part, equal with 1535 m², in value, obliging the Defenedant to pay to the Claimants according to the belonging parts.:*
- *Inhertier of IH (DH and LH) teh amount of EUR135.510.*
- *Inhertier of RH (AB and HB) teh amount of EUR 153.510.*
- *The Defendant PH shall pay the amount of EUR 76.740.*
- *The inheritier of FA (NB, AA, BZ, EB, BB, JA, MA) shall pay the amount of EUR 76.740".*

3.8 May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

Comment: *Please explain the "technique" of drafting such operative parts and how attachments are actually attached/connected to the judgment? Which attachments can be referred to in the operative part?*

Yes, in some cases, the operative part may refer to an attachment. In most of the cases, it is the expert's opinion the act that is issued as an integral part of the judgment. The operative part of the judgment makes clear reference to this report. See the Example 4 in the point 3.7 above.

3.9 What are the legal ramifications, if the operative part is incomplete, undetermined, incomprehensible or inconsistent?

Comment: *Explain whether this presents a ground for appeal or other legal remedy. Explain how this affects enforcement proceedings.*

In cases where the operative part is incomplete, undetermined, incomprehensible or inconsistent the ACPC provides for some legal remedies, as follows:

Correction of mistakes: 'After proclamation of the judgment the court cannot annul or change it. At the request of the parties or *ex officio* it may correct at any time only material errors made in writing or in calculation, or any obvious inaccuracy of the judgment.

After summoning the parties, in hearing, the court assess the request in conformity with the rules of the ACPC, issues the judgement, which it should be attached to the corrected judgement.

A special appeal may be made to the Court of Appeal against the issued judgment in the cases provided in the second paragraph of this article.' (art. 312 ACPC)

Completion of decision: 'Each of the parties may request the completion of the judgment, within thirty days from the announcement of the judgment, in case the court is not pronounced on all the claims on which the party has presented evidence. After summoning the parties, the court considers the request by the same court member and issues such complementary judgment. Appeal may be made against such judgment in conformity with the general rules. (art. 313 ACPC)

Clarification and interpretation of judgment: 'The court has the right to give clarifications or to make the interpretation of the judgment it has issued when it is obscure and upon the parties' request. The request for clarification and interpretation of the judgment may be submitted at any time, as long as the judgment is not enforced. A special appeal may be made against the above judgments in conformity with the general rules.

The court's judgment issued on the above cases is attached to the original judgment issued by the court.' (art. 314 ACPC)

3.10 May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

The court adjudicating a dispute must decide on everything sought and only on what has been sought by the parties (art. 6 ACPC). The court shall settle the dispute in conformity with legal provisions and other effective norms, applicable. The court shall make an accurate assessment of the facts and actions related to the dispute, and it is not bound to the assessment proposed by the parties (art. 16 ACPC). According to the Unified Judgement of the High Court, No.3 dated 29.03.2012, the Albanian courts follow the principle of *iura novit curia.*

Part 4: Special aspects regarding the reasoning

4.1 If applicable, how does the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

With regard to structure and content of the reasoning part of the judgment, article 310/II of ACPC provides as follows:

'II. In the reasoning part must be mentioned:

1. the circumstances of the case, as they have been assessed during the hearing, and the conclusions drawn by the court;
2. the evidence and reasons on which the judgment is based;
3. the legal provisions on which the judgment is based.'

4.1.1 Is there a specific order to be followed when drafting the reasoning?

Comment: *The reasoning usually contains both factual and legal grounds for the decision. Should these aspects follow a predetermined order or may they intertwine?*

Answer to this question already provided in point 4.1 above.

4.1.2 How lengthy/detailed is the reasoning?

There is no limit about the length of the reasoning part of the judgment. In the legal practice the length of the reasoning part of the judgment depends on the kind of the judgment (judgment on the merit of the case; judgment on suspension of the procedure, judgment on dismissing the case, judgment on non-acceptance of the appeal etc.) and the complexity of the case. Logically, the judgements on the merit of the case are more detailed then the others. Approximately they vary from 5 to 10 pages.

4.1.3 Do you find the reasoning to be too detailed?

It depends case by case. But generally speaking, in my opinion the reasoning part looks adequality detailed.

4.1.4 Are the parties' statements (adequately) summarised in the grounds for decision?

According to article 310/I/7, the final parties' statements should be incorporated in the introduction part of judgment.

4.1.5 Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

The party's statements are strictly separated from the court's assessments. It is easy to distinguish the parties' statements and the court's assessment because they are usually separated with headlines in bold or in capital letters.

4.2 In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

Comment: *Prerequisites are to be understood as all criteria necessary to initiate the proceedings correctly under national law, e.g. jurisdiction, standing, party capacity etc.*

It is not a requirement by law to include in the judgment procedural prerequisites of the process. However, there are some judges that address very shortly some of the procedural prerequisites, such as jurisdiction, competence etc.

4.3 Are independent procedural rulings properly re-addressed in the judgment?

Usually the judgments that can be appealed against independently, are not necessarily included in the judgment. Exceptionally, only those that affect the structure of the judgments might be re-addressed in the judgment. Examples: judgment on the joinder of the proceedings, judgment on the admission of counterclaim etc. However, rulings which are taken together with the judgment must be included in the reasoning and operative part of it.

4.4 What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the Judgment?

Referring to the jurisprudence of the Albanian Constitutional Court, *res judicata* includes not only the operative part of the judgment, but also the findings of fact and the application of law, set out in the reasoning part of the decision, conditionally that the fact and legal relationships are performed in function of rendering the decision and form the object of the adjudication upon which the court rendered the judgment.[25]

[25] JCC-24/08; JCC-14/17; JCC-36/13; JCC-41/16; JCC-87/16; JCC-71/17; JCC-62/15; JCC 44/14; JCC 36/10; JCC-21/10

Part 5: Effects of judgments – the objective dimension of res judicata

5.1 A final judgment will, in most Member States, obtain *res judicata* effect.[26] With regard to this point, please answer the following questions:

5.1.1 What are the effects associated with *res judicata* in your national legal order?

With regrad to the effects of *res judicata*, refering to the jurisprudence of the Albanian Consitutional Court, a final judgment that becomes *res judicata* is an expression and concretization of the right to a legal relationship and is intended to provide not only clarity but also certainty for that relationship. [27] *Res judicata* is recognized as one of the three forms of effects that judicial judgments render in the abstract procedure of constitutional control of legal norms. Formally and procedurally, it implies the termination of a process, in terms of the irreversibility of the judgment, while in the substantive sense it means the binding power of the judgment.[28]

The Albanian Supreme Court has also analyzed the forms of *res judicata's* appearance in civil litigation. According to that Court, *res judicata* appears in two forms, formal and substantive. In the formal sense, it appears as a legal state of exhaustion of the procedural remedies of appeal and of the existence of preclusivity with regard to the possibility of appealing a final judgment. In the substantive sense it is understood as a legal situation not only of mere impossibility for litigants to reopen the case, but also as a right of each of them to challenge the possibility of reviewing the solution to the dispute in a new trial.[29]

5.1.2 What decisions in your Member State have the capacity to ~~become~~ *res judicata*?

According to the Albanian legislation, the final judgments on the merits of the case (regardless if it is a court settlement) have the capacity to become *res judicata*. However, among the final judgements on the merits of the case there are some exceptions, which depend on the individual circumstances of the proceedings (rather than on the type of the judgment that is issued by the court). So, the law provides for the possibility of amending a final judgment in the case of judgments that deprive or restrict the capacity to act, the judgment on maintenance or the judgment to grant or remove custody, etc., which refer to a factual situation which may change. Therefore, in these cases, even a final judgment can be changed.

Also, the declaratory judgments do not have effect against the third parties who have not been called to in the hearing if they challenge the facts established in the judgment. (art. 391 ACPC)

[26] If your national legal order does not operate with the principle of res judicata, then please thoroughly describe the alternative doctrine governing finality of judgements. Please answer the questions in this Part of the questionnaire by mutatis mutandis applying your respective doctrine. If this is not possible, please approximate the answers as far as possible or provide additional explanations.
[27] JCC-27/15; JCC-24/08; JCC-23/07; JCC-10/17; JCC-07/14; JCC-12/14; JCC-28/14; JCC-15/13; JCC-43/11; JCC-15/12
[28] JCC-28/12; JCC-29/06
[29] Judgment of the Civil Chamber of the High Court Nr. 483, dated 25.09.2014 and No. 84, dated 23.02.2010.

Foreign arbitral award and foreign judgments become *res judicata* after they are recognized in RoA by the appeal court. Domestic arbitral award become *res judicata* in case there is no appeal against them or the state court leave it in force.

5.1.3 At what moment does a Judgment become *res judicata*?

Comment: *Pinpoint the time and/or requirements when the judgment meets the criteria for becoming res judicata*.

The ACPC identifies the final judgment of the Appeal Court with the judgment of *res judicata*'s effect. The ACPC' provisions (articles 450, 450/a and 472 ACPC) on this issue have generated debates and issues that have been addressed not only by domestic doctrine[30], but also by the ECHR's judgments in which the RoA has been one of the parties. [31]

According to article 450 of the ACPC, the judgment of the first instance becomes irreversible (i formës së prerë) when: a) it cannot be appealed ; b) no appeal (at the Appeal Court) has been made against it within the time limits determined by law or when the appeal has been withdrawn; c) the appeal submitted has not been accepted; ç) the judgment of the court is left in force, is changed or the hearing in the second instance (Appeal court) has been ceased.

A judgment that has become irreversible shall be mandatory for parties, their heirs, for the people who take away rights from the parties, the court that has issued the judgment and for all other courts and other institutions. A judgment that has become irreversible has authority over only what has been decided between the same parties, on the same subject (*petitium*) and for the same cause (*causam petendi*). A conflict that has been resolved with an irreversible judgment cannot be adjudicated again unless the law provides otherwise. (art. 450/a ACPC) A civil irreversible condemnatory judgment is an enforcement title, and therefore binding. (art. 510(a) ACPC)

On the other hand, against the judgment of the Appeal court (which, as explained above is considered to be an irreversible judgment) parties are free to exercise the right of appeal (recourse), which is an ordinary mean of appeal.[32] Judgments of the Appeal court and those of first instance 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 judgment 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 invalidity of the judgment or of the hearing's procedure. (art. 472 ACPC)

Beyond the above provisions, albanian doctrine and case laws share another view with respect to the *res judicata'*s effect of the judgment. The Albanian legal doctrine has held that the judgment of the Court of Appeal, despite being considered irreversible and enforceable under articles 450 and 510 of the ACPC, becomes *res judicata* only after the High Court rejects the recourse or adjudicates the recourse and upholds the judgment of the court of appeal. In other words, the judgment of the High Court (and not the judgment of the Appeal Court) should have the effect of *res judicata* as long as the judgment of the Appeal Court may be appealed by an ordinary mean of appeal.[33]

[30] Flutura Kola Tafaj Asim Vokshi, Pjesa II, 'Procedure Civile' f. 308
[31] ECtHR 25 September 2012, Case No. 58555/10, Rrapo v Albania, para. 80-85; ECtHR 29 September 2009, Case No. 32907/07, *Gjyli v Albania* para. 33-34; ECtHR 24 June 2014, Case No.1542/13 *Becaj v Albania* para. 32-33 etc.
[32] JCC No. 6/2003
[33] Flutura Kola Tafaj Asim Vokshi, Pjesa II, 'Procedure Civile' f. 308.

Moreover, refering to the Joint Chambers of the Albanian High Court (regardless the fact that it refers to a criminal case, the issue is the same), a judgment can be enforced without necessarily having the status of *res judicata*. The judgment of the Appeal Court is enforceable, but does not constitute a *res judicata* judgment. In other words, every judgment that is *res judicata* is always enforceable, but not the other way around, since not every enforceable judgment is *res judicata*. [34]

The confusion in the Albanian legislation (identification of the final judgment with the *res judicata* judgment) has been addressed directly in some EctHR's judgments in which one of the parties has been the Republic of Albania. In the case *Rrapo vs. Republic of Albania*[35] the ECtHR states that, the Court does not accept the Government's argument that, in extraditing the applicant, they complied with the final Court of Appeal's judgment. For the purposes of the Convention, a final judgment which has become *res judicata* is a judgment which may not be subject to control by a higher instance court and, eventually, quashed, whereas the present Court of Appeal's judgment was lawfully quashed by the Supreme Court's judgment and those proceedings are still pending.[36] The EctHR has held tha same position in other cases such as *Gjyli vs. Republic of Albania*, *Xheraj vs. Republic of Albania* etc.

5.1.3.1 How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

Answer to this question already provided in point 5.1.3 above.

5.1.3.2 How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

According to the Albanian jurisprudence, an appeal may be ordinary or extraordinary. An ordinary mean is considered the appeal to the Court of Appeal and the recourse to the High Court. An extraordinary appeal is considered the request for revision of an irreversible judgment which has become *res judicata*.[37] As it is explained in the point 5.1.3 above, unlike what the Albanian legal provisions suggest, according to the doctrine and case law a judgment should become *res judicata* when all ordinary appeals have expired.

5.1.4 Is *res judicata* restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment?

As explained in the point 4.4 above, referring to the jurisprudence of the Albanian Constitutional Court, *res judicata* includes not only the operative part of the judgment, but also the findings of fact and the application of law, set out in the reasoning part of the judgment,

[34] Decision of the Joint Chamber of the High Court No. 2 dated on 03.11.2014, para. 31.
[35] ECtHR 25 September 2012, Case No. 58555/10, *Rrapo v Albania*.
[36] ECtHR 25 September 2012, Case No. 58555/10, Rrapo v Albania, para. 80-85; ECtHR 29 September 2009, Case No. 32907/07, *Gjyli v Albania* para. 33-34; ECtHR 24 June 2014, Case No.1542/13 *Becaj v Albania* para. 32-33 etc.
[37] JCC nr. 6/2003.

conditionally that the fact and legal relationships are performed in function of rendering the decision and form the object of the adjudication upon which the court rendered the judgment.[38]

5.1.4.1 Are courts bound by prior rulings on preliminary questions of law?

Comment: *A court in Member State A has to rule whether a seller must deliver goods. In its decision, the court argues that the contract between the seller and the buyer is null and void because of some errors of will. If the seller in Member State B later submits an action for the payment of the purchase price, does a court in Member State B have to dismiss that claim, as it is bound by the reasoning in the judgment of the court in Member State A, which argued that there had been an error of will? Will this be the case in your Member State? In other words, does finality pertain to preliminary questions on points of law? If it does, how are preliminary questions decided upon? Does the decision on preliminary issues form part of the operative part or reasoning? How are they elaborated in the Judgment?*

The answer of the above question should be divided in two sub-questions as follows:

1. Are the Albanian courts bound by prior rulings on preliminary questions of law in another judgment issued in Albania?
2. Are the Albanian courts bound by prior rulings on preliminary questions of law in another judgment issued in another foreign state?

1. With regard to the first question, the answer is positive. In order to explain how, I am bringing up a case law of the Albanian High Court and its reasoning and operative part which clearly explains the Albanian legal order with regard to this issue. The Claimant X has filed a revindication action against the Defendant Y for the release and delivery of the property (a house), claiming to be the rightful owner of the property in question. Defendant Y objected the Claimant X's claims for the release and delivery of the thing, opposing the manner in which the property was acquired by Claimant X. Specifically, claiming the invalidity of the donation contract, through which X had become owner of the house. The court rejected the Defendant Y's objections and decided to accept the claim of Claimant X.

Once this judgment became final and *res judicata*, the Claimant Y (Defendant in the first process) brought an action against the Defendant X (Claimant in the first process), claiming the invalidity of the donation contract entered into between X and Y. Defendant X (Claimant in the first process) challenged Y's claims based on the principle of *res judicata*, because the claim has a preclusive effect. In this case law, the Civil Chamber of the Albania High Court reasoned as follows:

> 'According to the law, the final judgment that has resolved the merit of the case constitutes a final and sustained solution of the dispute in both a constitutive and a preclusive sense. In the constitutive sense it gives a final solution of the dispute, while in the preclusive sense it makes impossible to seek in the court the change of the solution of the dispute determined by a final court decision. So, the authority and effects of *res judicata* are the termination of the civil process and the inability of the same parties to ask the court to review and decide again on the same subject matter.

[38] JCC-24/08; JCC-14/17; JCC-36/13; JCC-41/16; JCC-87/16; JCC-71/17; JCC-62/15; JCC 44/14; JCC 36/10; JCC-21/10.

In the objective sense, *res judicata* is related to the claim with same *petitium* and same *causa petendi.* In the subjective sense it is related to the same parties. Therefore, the judgment is binding only to the parties, and not to third parties, that have not been parties in the process.
The remedy by which the law upholds and determines the inviolability of what is affirmed and disposed of by a final judgment, is the preclusive effect of re-submitting to the court the claims and objections made, for which the court ultimately ruled in accordance with the law.
Res judicata's effect covers not only the operative part of the judgment, but also the circumstances of the case admitted in the proceeding, the conclusions and reasons on which that judgment is based, explained in the reasoning part and which relate to what the court orders in the operative part.
Matters of facts or of law which are of fundamental relevance to the matters for which a judgment (with *res judicata*'s effect) has been rendered (that is, issues which the court has examined, accepted and ordered in that judgment) are forbidden to be discussed and considered in any future proceedings, even with different parties, different *petitium* and/or different *causa petendi* from that of the final judicial judgment, although they may seem to appear for the first time.
In the civil process, *res judicata* covers not only the claims, but also the objections made, or that could and should have been submitted to challenge the constitutive facts of the right claimed at hearing by the Claimant or the Counter/Claimant. So the authority of *res judicata* covers not only the claims and submissions made during the hearing (the *res judicata* expressed), but also those that could and should have been made through the filing of a claim, counterclaim or objections, which though unelaborated in the final judgment, they are inevitably part of the legal rationale for the reasoning, conclusions and orders of the final judgment (known as tacit, implicit *res judicata*).'[39]

Regarding to the kind of decision that Albanian courts has issued when the claim is reversed with a judgment that has taken the effects of *res judicata*, there are different practices. In such a case, most judges decide to dismiss the claim (*rrezimin e padise*). While another, smaller group, decides to dismiss the case (*pushimin e gjykimit*). In my opinion, the courts should decide to dismiss the case (rejecting) and not dismiss the claim as long as they do not adjudicate the merit of the case.

2. With regard to the second sub-question 2, the answer is provided in the point 5.5.1 below.

[39] Judgment of the Civil Chamber of the High Court No. 84, dated 23.02.2010.

5.1.4.2 Does your legal order operate with the concept of "claim preclusion"?

Comment: *Claim preclusion bars a claim from being brought again on an event, which was the subject of a previous legal cause of action that has already been finally decided between the parties. Consider the following examples.*

First example: A claimant files suit for damages he incurred in a traffic accident, alleging that the defendant acted negligently. The court dismisses the claim. The claimant then files a second action for damages arising from the same traffic accident; however, this time he alleges battery (intentional tort) on defendant's side. Is the second action admissible?

Second example: A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages from the same traffic accident. Is the second action admissible or should the claimant have requested all damages in the first action?

Answer to this question already provided in 5.1.4.1

5.1.4.3 Are courts bound by the determination of facts in earlier judgments?

Comment: *Consider the following example. A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court finds that the claimant correctly observed traffic rules and drove through a green light. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages. In these proceedings, however, the court finds that the claimant drove through a red light. Is this a permissible finding or should the court give effect to the findings of the first judgement?*

Res judicata covers not only the orders of the operative part of the judgment, but also the matters of fact and law contained in the reasoning part of the decision. In order to better explain this effect of *res judicata*, I am referring a case law. [40]

In 1994 the Property Restitution and Compensation Commission has restituted a land to the persons X, Y, Z, as former owners. Therefore, X, Y, Z became owners of this land.

In 1996 the Property Restitution Agency sold the same spot of land to another person F.

The person F claims the invalidity of the decision of the Property Restitution and Compensation Commission suing the latter and one of the heirs of person X, person M (co-owner of the land). The Defendant M has filed a counterclaim, the *petitum* of which was the acquittal and surrender of the land claiming the unlawfulness of the ownership title of person F. At the end of the hearing, the court decided on the admission of the claim and rejection of the counterclaim.

In 2007, three heirs of the person Y seek in court the recognition of inheritance and the invalidity of the sales contract between the Property Restitution Agency and the person F. the three heirs of Y were not parties in the first proceeding, and therefore claimed that the *res judicata* effects of the first judgment cannot be extended to this second case.

[40] Judgment of the Civil Chamber of the High Court No. 353, dated 05.07.2011.

With regard to the *res judicata* effects in this case, the Civil Chamber of the High Court reasoned (among others) as follows:

"The High Court cannot take a position different from that previous decision….

Thus, this Panel considers that although in the classical sense we are not in the condition of *res judicata*, because the Claimant was not a party to the first proceeding, it cannot be ignored the fact that we are before the same *petitium* and before the same *causa petendi* once adjudicated.

The problem of defining the objective limits of *res judicata* in substance lies in defining what is decided in it. The final court judgment is binding throughout the arc of its operative part.

In order to see what the court has decided it is necessary to look at the *petitium* and *casua petendi*, as well as the reasoning part of the judgment. *Res judicata* includes not only the injunctions of the operative part, but also *the matters of fact and law contained in the reasoning part of the judgment*. So, *res judicata* also extends to the reasoning part of the judgment."

5.2 If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account *res judicata* effects?

The court adjudicating the dispute must decide on everything sought and only on what has been sought. (art. 6 ACPC) If part of the claim has been adjudicated in a prior judgment subject to the *res judicata* principle then the court dismiss the case (or the claim)[41] for that part of the claim subject to the *res judicata* principle and decides on the remainder of the claim.

5.3 In the case of a negative declaratory action, what is the effect of a finding that the matter is res judicata?

Comment: *For example, A initiates an action against B for a declaration that he does not have to pay B 1000 EUR (negative declaration). If the court dismisses the claim, does the judgment at the same moment declare that A does have to pay B 1000 EUR? If the dismissal of a negative declaratory action is the equivalent of a declaration of the converse (in inter partes proceedings), is such a judgment enforceable for the creditor (in this case: B)?*

Negative declaratory actions are provided by article 32 (b) the ACPC, but are rarely applicable in Albania. They are also provided by article 188(a) of the Albanian Law on Industrial Property which states that: '1. Any interested person may bring a lawsuit against the owner of the patent to prove that a particular action does not constitute an infringement of the patent. …….. If a lawsuit shall be submitted about the infringement of a patent by its owner or licensee against a person, the later has the right to submit a counterclaim to prove that his action does not constitute an infringement of the patent. 4. The aforementioned lawsuit can be submitted together with the request for the revocation of the patent".

A negative declaratory judgment may not be enforced because it does not contain obligations, but may serve as a basis for the later issuance of a binding judgment. Declaratory judgments do not have effect against the third parties who have not been called to in the hearing if they challenge the facts established in the judgment. (art. 391 ACPC)

[41] See point 5.1.4.1 above.

5.4 If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment has any effects outside of the pending dispute?

Comment: *Can a party rely on the res judicata effects of such a judgment in separate proceedings (is the court in another set of proceedings bound by the judgment) or are these effects confined to the dispute in which the judgment was rendered? Note: an interim judgment on the well-foundedness of a claim refers to a judgment finding the liability of the defendant to pay, but leaves the amount of payment to be determined in a subsequent judgement (the same as under question 3.1.5).*

In principle, the ACPC does not provide for interim judgments concerning the well-foundedness of a claim.

Exceptionally, the ACPC foresees such a judgment in the proceeding of a claim on the division of property on co-ownership. (art. 369-374 ACPC). The process of the judicial division of the property in co-ownership is a special process, which is conducted in two phases. In the first phase of the hearing it should be investigated and determined: (i) the right of co-ownership of each litigant; (ii) the belonging parts to each litigant, and (iii) the objects involved in the division. At this phase of the hearing, the origin of the co-ownership is of interest.

At the conclusion of the first phase of the hearing, the court issues an interim judgment on the above issues. The interim judgment rendered by the court of first instance at the conclusion of the first phase of the co-ownership division hearing, in terms of its consequences, has the characteristics of a final judgment. The judgment at the end of the first phase is an interim judgment of a special type (*sui generis*) and is not purely a procedural judgment.[42]

A special appeal can be filed against this judgment within 5 days. Filing of the appeal suspends the continuation of the second phase of the hearing. When the parties declare that they will not file an appeal against the first phase judgment, their statements shall be recorded in the court record and signed by the parties or their representatives. In these circumstances the court proceeds further to the second phase. Otherwise, the court will wait until the first phase judgment becomes final. Thus, in the second phase of the process on the division of property on co-ownership it should be passed when (i) the parties declare that they have no appeal against the interim judgment concluding the first phase, and when (ii) the interim judgment of the first phase has become final.[43]

The effects of the interim judgment of the first phase are identical with the effects of the final judgment of the first phase. Under no circumstances and for whatever reason, the court adjudicating the merits of the second phase of the division of property has any right to consider the problems related to the first stage judgment.[44]

The effects of the interim judgment outside of the pending dispute are neither provided by law nor addressed by the practice. However, in relation to this kind of judgment, the Unifyed Judgment of the High Court No. 628, dated: 15.05.2000 should be taken into consideration. As per the latter:

> "*....the judgment of the first phase of division ... is an interim judgment of a special nature (sui generis) ..... The judgments of the first phase of division, which we have*

[42] Unified Judgment of the Joint Chambers of the Hugh Court No. 628, dated 15.05.2000.
[43] Idem.
[44] Idem.

described above as interim judgments of a particular kind (sui generis), are not judgments of a purely procedural nature, ie. are not provided solely to ensure the ongoing of the proces within the requirements of the procedural norms. Given the special character of the adjudication of cases with the object of division of property and its division into two separate phases, the legislator has deemed it necessary and useful to solve some problems on the merits and finally with an interim judgment at the end of the first phase…."

5.5 Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.

5.5.1 Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with *res judicata* effect? What is the position regarding this question in your Member State?

Any foreign judgment shall be enforceable in Albania after being recognized in RoA. Once the foreign judgment is recognized in the RoA, then the Albanian court, upon request of the party, must take into consideration its *res judicata* effect of this judgment. A foreign judgment cannot be recognized in Albania if it irreconcilable with an earlier judgment issued by the Albanian court involving the same *causa petendi,* the same *petitium* and between the same parties. (art. 394(c) ACPC) This provision guarantees the aim of the Albanian legislation to avoid different rulings on the same issue.

In the concrete case, B can sue S in Albania, but S can avail from the *res judicata*'s effect of the judgment issued in the sate Y. Assuming that are fulfilled the criterias for *lis pendens* (as it stated in the question 5.5), which are the same with *res judicata* (the same *causa petendi*, the same *petitium* (the same end in view) and between the same parties), Albanian court should take into consideration the *res judicata*'s effect and dismiss the case.

5.5.2 If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y? What is the position on that question in your national legal order?

Following the answer in the point 5.5.1, the question might be: Does the Albanian court will recognize the *res judicata's* effect of the reasoning part of a foreing jdugment?

The Albanian legal order and doctrine do not address this issue specifically and the legal practice does not offer cases either.

The majority of judges and lawyers are more inclined to the view that once the foreign judgment is recognized in Albania, then that judgment should be equated in effect with the other Albanian judgments. Following this opinion and having regard to the position of the Albanian courts in relation to the *res judicata* effect of the reasoning part of the judgment (see point 5.1.4 above), it can be concluded that the Albanian courts will be bound even by the reasoning part

of the foreign judgment, regardless if according to the legal order of state of origine the *res judicata* effect does not cover the reasoning part of the judgment.

There is another theory (including my opinion) that a foreing judgment cannot be given more 'power' then it has in its country of origin. Therefore, the intersted party may raise the issue, that the reasoning part of the judgment does not have the effect of *res judicata* according to the law of the state of the origin of the judgment. In case of a judgment issued from a state court that does not give the *res judicata* effect to the reasoning part of the judgement (e.g..Switzerland) the Albanian courts should not take into consideration the findings in the reasoning part of that judgment. In this latter case, the Albanian courts will be bound by what it is stated in the operative part (*res judicata* effects) and will not take into consideration what it is stated in the reasoning part of the foreing judgment.

5.5.2.1 If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

It is not the case

5.5.2.2 If *res judicata* effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

It is not the case. For more see the explanation in the point 5.5.2 above.

5.5.2.3 If res judicata effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

The answer is provided in the point 5.5.2 above.

5.5.3 How do you handle the limitation period problem in the scenario described above? The lis pendens case law of the CJEU prevents the filing of a warranty liability claim in State Z as long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in State Z (your home State) without making the warranty case pending?

Albania legislation does not provide for cross border *lis pendens* in strictum sensus, same as article 29 of the B 1A, but it provides for conditional cross border *lis pendens* same as provided in article 33 of the B 1A. According to article 38 of the ACPC, when the same claim, between the same parties, with the same *petitium* and same *causa petendi* is being adjudicating simultaneously by a court of a foreign country and the Albanian court, the latter may suspend the proceedings on this dispute when: a) The action has been brought before in time in the court of a foreign country; b) The judgment 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. The Albanian court shall dimisse the case (cease the process), when the court of a foreign country resolves the dispute by a final judgment, which can be recognized and/or enforced in the Republic of Albania.

The above provision means that the Albanian courts, in case of *lis pendens* may suspend the process, but do not cease the case. Therefore, limitation period is not in question.

Part 6: Effects of judgements - res judicata and enforceability

6.1 What is the relation of res judicata to enforceability, i.e. can a judgment be enforced before it is res judicata?

Comment: *Does your legal order operate with the institution of "provisional enforceability", i.e. the enforceability of judgments that are not (yet) res judicata, but have nonetheless been endowed, either by the decision of a court or by operation of law, with the attribute of enforceability? Do you think such (foreign) judgments might be controversial from the perspective of the (procedural) legal order of your Member State, if the creditor attempted to enforce them? For an example of provisional enforceability, see §§704, 708, 709 of the German ZPO).*

According to the Albanian legal order, any judgment that has become *res judicata* is always enforceable, but not *vice versa*, because not every judgment that is enforceable is considered as *res judicata*.[45] So, as an exemple, article 317 of the ACPC provides for the judgment on temprory enforcement. These are judgments of the first instance courts, subject to appeal, but in special circumstances the Albanian courts may issue them on temprory enforcement. The judgment of the court may be issued on temporary enforcement when it has decided on: a) a maintenance obligation; b) on the retribution for work; c) on the return of possession of conjugal place of abode. The judgment may be also issued on temporary enforcement when due to the delay of enforcement the Claimant may suffer important damage, which cannot be remedied or when the enforcement of the judgment would become impossible or would be made exceedingly difficult. In this case the court may demand that the Claimant give a guarantee. These judgments do not have *res judicata* effect.

Moreover, the decision on security measures does not have (and cannot have) the *res judicata* effect, but they are enforcable at the moment the court issues them. Also, for the judgment on fines imposed by the court, judgment on forced taking of evidence, the judgment on the part ordering court costs are enforceable but do not have *res judicata* effect.

Finally, as explained in the point 5.1.3 above, the judgments of the Appeal Court (*second instance*) are enforcable, but according to the Albanian doctrine and case law, and EctCHR judgments cannot have *res judicata* effect.

6.1.1 Is provisional enforceability suspended (by operation of law or at the discretion of the court) if an appeal is lodged?

According to the ACPC, the judgment of the Appeal Court is enforceable, but in case of exercising the right of appeal (recourse) to the High Court, upon the filing of the recourse, at the request of the party, the High Court may decide suspension of enforcement of the judgment when: a) Immediate enforcement of the judgement shall incur serious and irreparable

[45] Unified Judgment of the Criminal Chamber of the High Court, No. 2, dated 03.11.2014, para. 31.

consequences; and/or b) The party submitting the recourse produces evidential guaranties that shall ensure the enforcement of the judgement. (art. 470 parag. 1 of ACPC)

With regard to the judgments on provisional measures, the appeal against the judgment which allows the security measure does not suspend its enforcement. The appeal against the judgment by which the security measure is replaced or removed suspends its enforcement. (art. 210 ACPC)

With regard to the judgment on temporary enforcement, a special appeal may be made against the decision by which the request for temporary enforcement is accepted or rejected. In case the judgment is annulled by the Court of Appeal or the High Court, the temporary enforcement shall be suspended. In the event that after the annulment of the first decision, the claim is dismissed and the judgment becomes irreversible, the first winner shall be obligated to return to the other party anything it has taken by means of the temporary enforcement of the first decision. (art. 318, 319 ACPC)

Moreover, during the enforcement phase, the interested party may exercise three kind of actions: 1. The Invalidity of the enforceable title (art. 609 ACPC); 2. Appeal against the actions of the Enforcement Officer; (art. 610 ACPC) 3. Action of the third person requesting the object (art. 612 ACPC).

In the case of an action for invalidity of an enforceable title, the court may decide to suspend the enforcement of the judgment with or without a guarantee. When the enforceable 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 enforcement, 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 enforcement of the judgement is considered as not in force. Suspension of the judgment is not decided by the court when the debtor claims that the obligation imposed on the enforcement 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 judgment 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. (art. 609 para. 3 ACPC)

Appeal against actions or refusal to act of the Enforcement Officer shall not suspend enforcement of the judgment, unless the court decides otherwise. When the enforcement 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 enforcement of the judgment, the suspension measure is considered to have ceased to have effect within 20 days from the moment of the grant of the judgment on suspension. (art. 610 parag. 3&4 ACPC)

In the case of an action of a third person requesting the object, each third person who claims to be the owner of the object on which enforcement is made, may bring an action to exercise his right and if it is the case to exempt the object from seizure and sale. In these cases, the court may decide as a temporary measure the suspension of the enforcement with or without guarantee. (art. 612 para. 2 ACPC)

6.1.2 Who bears the risk if the provisionally enforceable judgement is reversed or modified?

6.1.2.1 Must the judgment creditor provide security before the judgment can be enforced?

(i) With regard to the judgment for security measures, on the request of the Claimant, the court allows within 5 days the taking of measures to secure the claim, when there are reasons to doubt that the enforcement of the judgment for the rights of the Claimant shall become impossible or difficult. The securing of the claim is allowed when: a) the claim is based on evidence in writing; b) the Claimant gives guarantees to the degree and kind determined by the court for the damage that may be caused to the Defendant by securing the claim. The guarantees may be required even in the case provided in letter 'a' above of this article. (art. 202 ACPC)

The guarantee given in conformity with article 202 of the ACPC it will be returned to the Claimant, in case the other party does not bring a claim for the compensation of the damage suffered due to such a cause within fifteen days from the date the judgment has become irrevocable.

(ii) In case of judgments on temporary enforcement, the court may demand the claimant to give a guarantee. It means that it is in the discretion of the court to assess the need for a guarantee. (art 317 ACPC) With regard to the consequences of annulation of judgment, according to article 319 of the ACPC, in case the judgment is cancelled by the court of appeal or the High Court the temporary enforcement shall be suspended. In the event that after the cancellation of the first judgment the claim is dismissed and the judgment becomes irrevocable, the first winner shall be obligated to return to the other party anything it has taken by means of the temporary enforcement of the first judgment.

(iii) For enforcement of the final judgments (even when they are not yet *res judicata*), a guarantee is not required. With regard to the consequences of revocation of an unjust judgment that is fully or partially enforced, article 485(a) of ACPC provides that: 'When the new judgment issued after revocation is different from the first judgment that is fully or partially enforced, the person who has benefitted is obliged to return all the benefits obtained from enforcement of the judgment'.

6.1.2.2 Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

It is explained in the point 6.1.2.1 above.

6.1.2.3 Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

No, the right of the debtor to be compensated for damages suffered by a judgment on securing the claim and on temporary enforcement being enforced does not depend on whether the debtor voluntarily payed (performed) the claim.

6.1.2.4 Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgment, by a first instance court or a court of appeals?

As we have explained in point 1.7 above the Albanian legal order does provide for default judgments.

6.1.2.5 What is the scope of the compensation? Is it limited to direct loss or is indirect loss also covered?

Following the answer given in the point 6.1.2.1 above,

(i) article 211 ACPC that address the guarantee given in conformity with article 202 ACPC for security measures, provides the possibility to bring a claim for the compensation of the damage suffered due to such a cause, implying even the indirect loss.

(ii) Article 319 ACPC, that address the guarantee for judgments on temporary enforcement, refers only to the return of what the creditor has taken through the provisional enforcement and does not refer to the indirect loss;

(iii) Article 485(a) ACPC that address the consequences of revocation of an unjust judgment that is fully or partially enforced, in the way how it written "the person who has benefitted is obliged to return all the benefits obtained from enforcement of the judgment" it means that the compensation is not limited only to the direct loss (what he has profited by the enforcement of judgment) but it covers all benefit the debtor has accumulated.

6.2 Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

Comment: *The question is framed in general terms regarding enforcement of judgements, not in relation to provisional enforceability. If answered in the positive, please indicate what are the legal consequences of the suspension, i.e. is the judgement by operation of law not considered enforceable within this period or does the judgement creditor merely take on the risk of bearing costs for enforcement.*

According to the Albanian law, there is not any suspensive period within which the judgment creditor cannot initiate the enforcement proceedings, but there is a limitation period within which the Enforcement Officer cannot initiate the mandatory enforcement.

First of all, we should note that an enforcement process cannot commence without having an enforcement order. As we have explained above, an enforcement order is included in the judgment when the enforcement title is a judgement. In the other cases, it is a court judgment that establishes the existence of an enforcement title capable of being enforced and consequently orders the enforcement authority to enforce the content of that enforcement title.

The enforcement process is carried out in two phases: (1) Voluntary enforcement; and (2) Mandatory enforcement. The Enforcement Officer should exhaust the voluntary enforcement before proceeding with mandatory enforcement.

At the commencement of the enforcement of the judgment, the Enforcement officer issues to the debtor a notice for voluntary enforcement of the judgment contained within the enforcement order, designating for this purpose, a timeframe of 5 (five) days when the subject of the judgment involves a salary or an order for maintenance and a timeframe of 10 (ten) ten days for all other cases. (art. 517 para. 1 ACPC)

Mandatory enforcement cannot commence before the time limits provided in article 517 ACPC have expired, unless a danger exists that with the expiry of the time limit the enforcement shall be made impossible. In such a case the Enforcement officer may start immediately the mandatory enforcement. (art. 518 ACPC)

6.3 Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*) and what are its effect?

The Albanian judgments that contain obligations for the parties (that may become enforcement titles) contain a phrase stating that 'this judgment is enforceable from the Enforcement Officer', which is considered the enforcement order as per article 511 of the ACPC. If the judgment that contains this phrase becomes irreversible than, the interested party may submit a request to the Enforcement Officer to enforce the judgment. A judgment that does not contain this phrase (which is called enforcement order) cannot be enforceable. (art. 310 & 511 ACPC).

6.4 How would your legal order deal with foreign enforcement titles, which involve property rights or concepts of property law unknown in your system?

According to the ACPC only foreign judgments (among other enforcement titles) can be recognized and consequently enforced in Albania.

With regard to the judgments which involve property rights or concepts we bring to your attention that according to article 72 (a) of the Albanian International Private Law, Albanian courts have exclusive jurisdiction to adjudicate property and other immovable property rights cases, as well as the rent and rights arising from the use of immovable property for remuneration when located in the RoA. Therefore, in case of an application for recognition of a foreign judgment on the above dispute, the Albanian courts will not recognize this judgment because according to article 394 (a) 'the judgment of a court of a foreign state does not become effective in Albania when in conformity with the provisions in effect in the RoA, the dispute cannot be within the competence (jurisdiction) of the court which has issued the judgment.'

In case when the judgments involve property concepts of law that are unknown in our system, the judgments risk not being recognized by the Albanian courts because under article 394(dh) of the ACPC, the judgment of a court of a foreign state does not become effective in Albania when it does not comply with the basic principles of the Albanian legislation. For example, the Appeal Court of Tirana has refused to recognize a default judgment issued by a

Macedonian court reasoning that this judgment does not comply with the basic principles of the Albanian legislation, because the Albanian legislation does not provide for the default judgment.[46] The same might happen to the property issues or concepts unknown by the Albanian legal system.

Part 7: Effects of Judgments – Personal boundaries of res judicata

7.1 How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right, which is the subject of an ongoing litigation; indispensable parties)?

In principle a judgment that has become irreversible has binding effects only over what has been decided between the same parties, on the same *petitium* and for the same *causam petendi*. According to article 451/a ACPC, a condemnatory judgment that has become irreversible shall be mandatory for the 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 third person, who join a proceeding through a secondary intervention, has the right to perform all the procedural actions which are allowed to the parties, except those which relate to the possession of the *petitium* of the action. (art. 195(1) ACPC) The judgment given after a secondary intervention has effect against the third person both in terms of his relationship with the person who called him or for whom he intervened to help him, as well as in terms of his relationship with the opposing party. (art. 196 ACPC).

Exceptionally, Albanian legal order provides for extraordinary *legitimatio ad proccessum* in some special cases. In these cases, despite the fact that person X is not a direct party in the process, the final judgment extends the effects on him as well. For example: According to article 55 of the Law "On Consumer Protection", Consumer Associations has right to seek the cessation or prohibition of violations that harm the collective interests they represent. The effects of the judgment in this case extend to consumers who are also real holders of the claimed right, who are not parties in the process.

Also, another case is that provided in Article 344 of the Civil Code, according to which the guardian of the inheritance is appointed by the court when it is not known if there are heirs or when the heirs are missing and there is no news about them or when the legal or testamentary heirs have given up the inheritance. The guardian of the inheritance, among others, has the right to sue for the inherited property, as well as responds to claims that may be filed in relation to this property (n. 345 KC). In this case the guardian of the inheritance is not a representative of the heirs, because these do not turn out to exist, but is nevertheless legitimized by the law to file a claim on his behalf, but on behalf of the (potential) heirs. Even in this case the effects of the judgment do not fall on the guardian as a party in the process but fall on the heirs.

7.2 Do certain judgments produce in rem (*erga omnes*) binding effects?

Constitutional judgments produce *erga omnes* binding effect. Also, a constitutive judgment, such as judgment on the division of property in joint ownership, on the dissolution of marriage, etc. produce *erga omnes* binding effect.

[46] Judgment of District Court of Tirana No. 7 dated 28.01.2019.

7.3 How are (singular and universal) successors of parties affected by the judgment?

Comment (7.3): *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible, e.g. succession to non-pecuniary damages claims.*

According to article 451/a of ACPC a judgment that has become irreversible is mandatory for the successors of the parties. When succession of the parties, either of the creditor or the debtor, occurs after the rendering of the judgment, during enforcement proceedings, according to article 615 of ACPC, enforcement will be suspended, with the exception of the sale by auction of an immovable thing, on which the announcement is made.[47] The suspension of the enforcement except in the cases when it is decided by the court, are decided by the Enforcement Officer. The interested persons must show to the Enforcement Officer a certificate of inheritance, which is issued by notaries and then the enforcement will continue on behalf or against the successors.

However, not all kind of judgments are mandatory for the successors of the parties. The judgments on non-pecuniary damages are related to the personal character and therefore are not hereditary. Or for example according to article 212 of the Albanian Family Code, the obligation for alimony ceases with the death of the obligated person, the person who benefits that, even if this obligation, which is contained, in an irreversible judgment, has not been enforced.

Part 8: Effects of Judgments - Temporal dimensions

8.1 Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

According to article 304 ACPC, no other evidence may be taken after the hearing in the first instance court is concluded. The parties may require the reopening of the hearing for taking new evidence only under specific conditions. The court decides on this request, by assessing the all circumstances of the case. This request may be done from the moment the Court closes the hearing and till the Court issues the judgment.

A review of the judgment by the Appellate Court should take place only on the basis of the fact and law available at that moment. At the request of parties, or *ex officio*, the Court of Appeal shall partially or entirely reopen judicial investigations, but no new requests can be submitted in the proceedings at the Appellate Court, to add or change elements of the claim, except the request for the costs of the hearing on appeal.

The Appellate Court 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;

[47] Article 615 and 297 of the ACPC

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.

A change in legal status occurring in the proceedings does not give rise to a change in a judgment issued in accordance with the law.

8.2 If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

In special cases, upon a request of the debtor, the first instance court of the enforcement place, 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 enforcement of the obligation in money or may divide such an obligation in instalments, except when this obligation arises due to a bank loan. The judgment should be issued within 20 (twenty) days from the filing of the request. A special appeal may be lodged against it. (art. 517 ACPC)

In case of judgments ordering periodic performance, the amount of the instalment may be changed by way of an action when specified conditions are met. E.x. Article 207(1) of the Albanian Family Code, provides that: "The court, upon the request of an interested person can reduce, remove or increase the alimony obligation, determined by a final judgment (irreversible), when the circumstances on the basis of which the judgment was issued have changed later."

8.3 Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

According to article 304 ACPC, no other evidence may be taken after the hearing is concluded. The parties may require the reopening of the hearing for taking new evidence only under the special conditions and the court decides on this request, by assessing the all circumstances of the case. **This request may be done from the moment the Court closes the hearing and till the Court issues the judgment. After the Cout issues the judgment, the debtor cannot make request for reopening the hearing.**

In the enforcement proceedings, the debtor may request to the competent court of the place of enforcement to declare that the enforcement title is invalid or that the obligation does not exist or that it exists to a smaller amount or is extinguished subsequently (Action on the invalidity of the enforcement title). When the enforcement title is a judgment or an arbitral award, the debtor may contest the enforcement of the title **only for facts occurred after the issuance of those judgments.** The time limit for seizing this action is 30 days from receipt of notification on the beginning of the mandatory enforcement.

According to the Albanian law, there is a gap between the time of closing the hearing and the time of issuing the judgment. Therefore, the question might be: Can facts that occur after the hearing and before issuing the judgment be invoked by the debtor with a legal remedy?

Albania legal order provides for Request for revising of an irreversible (final) judgment. (art. 494 ACPC) One of the reasons for submitting such a request is when new circumstances or new written evidences pertinent to the case, which could not have been known by the party during the proceedings, are discovered. This remedy can be filed within 30 days from the day that the party proves that has received notice for the cause of the review (new circomstance or new written evidence). This is the only remedy that the debtor can use for facts that occur after the last session of the main hearing and before issuing the judgment from the court.

8.4 Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

The law does not provide for set-off in the enforcement phase, regardless the exercising of the right to a counterclaim (based on set-off) during the hearing or not.

Also, according to Albanian law, the set-off is not provided as one of the forms for ceasing the enforcement. According to article 616 of the ACPC, enforcement ceases:

a. when the debtor presents to the Enforcement Officer the statement signed by the creditor, duly certified, that he has paid the amount indicated in the enforcement order, or a payment note from the post office or a bank letter in which it is certified that the amount indicated in the enforcement order has been paid to the benefit of the creditor;
b. when the creditor renounces in writing from the enforcement;
c. when the court declares, by a judicial final judgment, according to article 609 ACPC, that the enforcement title is invalid, or that the obligation does not exist, or exists in a lower amount, or that has been abolished afterwards;
d. when by a judgment which has become irrevocable the claim of the debtor in conformity with article 610 ACPC, or of the third person in conformity with article 613 ACPC is accepted.'

However, according to the Civil Code, one of the forms of termination of obligations recognized by the Albanian Civil Code is with compensation (set-off). Therefore, the Enforcement Officer can offer to both, the creditor and the debtor) the possibility to have an agreement for set-off their obligations. In practice there are a lot of cases which are solved out by a set-off procedure during the enforcement phase, in case of two enforcements titles between the same person as creditor and debtor but in *vice versa* positions. However, as long as the parties does not make it voluntarily, the set-off cannot be invoked during the enforcement phase by the debtor.

Part 9: Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1 The B IA Regulation uses the concept of a "cause of action" for the purposes of determining *Lis pendens.*

9.1.1 How does your national legal order determine *lis pendens*?

There are two provisions in the ACPC that address the issue of *lis pendens*. Article 58 ACPC[48] provides the *lis pendens* with regard to the competence of the Albanian courts (in relation with each other) and article 38 of the ACPC[49] which provides the *lis pendens* rules with regard to the jurisdiction of the Albanian court in relation to foreign courts. Both provisions provide the conditions of having (i) the same parties, (ii) the same *casua petendi* and (iii) the same *petitium*, in order to be in the condition of *lis pendens.* Article 38 of the ACPC is a meticulous adaptation of article 33 of B IA.

9.1.2 How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

The Albanian procedural law does not provide a definition of the elements of *lis pendens,* but a Unified Judgment of the Joint Chambers of the High Courts does.[50] This judgment has addressed the meaning of *petitium* and *causa petendi*, which are part of the assessment of the elements of *lis pendens*.

According to the said Unified Judgment, the cause of action (*casua petendi)* is the combination of the infringing fact and the subjective right upon which the action is based and which is related to the legal relationship that is the basis of the claim filed in court. In these circumstances, the meaning of *causa petendi* is in accordance with the meaning of *causa petendi* given by the CJEU in *The Tatry v The Maciej Rataj*, which states, that the "cause of action" comprises the facts and the rule of law relied on as the basis of the action."[51]

[48] Article 58 ACPC: '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.'

[49] Article 38 of the ACPC: '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; 10 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.'

[50] The Unified Judgment of the Joint Chambers of the High Court No. 3, dated 29.03.2012.

[51] ECJ 6 December 1994, Case C-406/92, *The Tatry v The Maciej Rataj*, ECLI:EU:C:1994:400, para. 38.

9.1.3 Does your national legal order allow a negative declaratory action? If so, how is this action treated in relation to contradictory actions (e.g. for (payment of) damages)?

The answer to this question is provided in the point 5.3 above

9.1.4 How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the B IA?

The meaning of 'the same parties' and the procedure of assessing the identity of them according to the Albanian legal order is the same with that of B IA and especially in conformity with the approach of the CJEU. The application of *lis pendens* does not necessarily require the parties to have the same procedural position in the proceedings. In other words, if in the first case A is Claimant and B is the Defendant, while in the second case, B is Claimant and A is the Defendant, this element does not make the provision on *lis pendens* inapplicable.

9.1.5 How should we understand the requirement that judgments need to have "the same end in view" as expressed by the CJEU?

With respect to the concept of the object of action (*petitium*), in the *Tatry v The Maciej Rataj case*, the CJEU held that: 'For the purposes of article 21 of the Convention, with the same object of action is understood the same end in view.'[52] Meanwhile the Joint Chambers of the Albanian High Court give a narrower meaning to the object of action. According to them, 'the object of action (*petitium*) is what is required by filing an action in court and it relates to the decision that the court is required to make."[53] The concept of the 'the object of action' according to the CJEU is a broader concept which includes the concept of 'the object of action' according to the Albanian jurisprudence and goes further, to the intention of the action.

9.2 Does your national legal order operate with the notion of "related actions"? If so, what are the effects it ascribes to them? Please accompany the answer with relevant case law.

The notion of "related action" is provided by article 57 of the ACPC, but not in the meaning of article 30 and 34 of the B IA. According to this provision (art. 57 ACPC), when two or more actions are being adjudicated in different proceedings and are linked between them by subject or cause, they can be joined into a single hearing. The judgement for joinder of cases shall be made by the court in which the case has been filed before in time. 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 judgment, has not been issued. When joining actions, which are adjudicated according to the rules of a summary trial with actions adjudicated according to ordinary rules, for the adjudication of the case shall be applied the ordinary rules. This provision shall not apply where the material competence in the cases under consideration is not the same.

The Albanian procedural law does not provide the *lis pendens's* rule with regard to the 'related action', as it is provided by article 30 and 34 of the B IA.

[52]ECJ 6 December 1994, Case C-406/92, *The Tatry v The Maciej Rataj,* ECLI:EU:C:1994:400, para. 40.
[53]Unified Judgment of the Joint Chambers of High Court No. 3, dated 29.03.2012, para. 23.

9.3 Has your Member State experienced cross-border cases involving related actions within the meaning of the B IA?

As I explained in the point 9.2 above the Albanian law does not provide the international *lis pendens's* rule with regard to the 'related action'.

9.3.1 How have your courts defined irreconcilability for the purpose of related actions?

As I explained in the point 9.2 above the Albanian law does not provide the *lis pendens's* rule with regard to the 'related action'.

9.3.2 How have your courts exercised the discretion to stay proceedings?

As I explained in the point 9.2 above the Albanian law does not provide the *lis pendens's* rule with regard to the 'related action'.

Part 10: Court settlements

10.1 What are the prerequisites for the conclusion of a court settlement?

The prerequisites for conclusion of a court settlement are as follows:

a) The dispute must be of a civil, commercial, family, labour, intellectual property, or consumer rights natures.[54]

b) The settlement must not be contrary to the law.[55]

According to article 2 (4) and (5) of the Albanian Mediation Law[56], "the court, within the competencies provided by law, must advise, instruct and, as the case may be, clearly and comprehensibly inform the parties of the mediation, in particular, but not limited to disputes: a) In civil matters and family, when the interests of minors are intertwined; b) In matters of reconciliation in cases of dissolution of marriage, provide-d by article 134 of the Family Code; c) In cases with property character, related to the rights of ownership or co-ownership, division of property, revendications and denial actions, and actions for cessation of violation of possession, disputes arising from non-fulfilment of contractual obligations, such as and those that have as their object the compensation of non-contractual damage."

According to article 158/ ç (1) (2) ACPC, 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. At each

[54] Article 2, para. 2 of the Law No. 10 385, datë 24.2.2011 "For mediation on solving the disputes" amended lately by the Law No. 26/2018. Mediation is also applicable to disputes between public administration bodies and private persons. Mediation in the criminal field applies to disputes examined by the court at the request of the accused victim, or at the request of the injured party, according to Articles 59 and 284 of the Code of Criminal Procedure, as well as in any case where special law allows it. The provisions of the Juvenile Justice Code apply to mediation in juvenile delinquency.

[55] Article 158/ç para. 5 of ACPC.

[56] Law No. 10 385, dated 24.2.2011 "For Mediation on Resolving the Disputes".

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.

10.1.1 Describe the necessary elements a court settlement must contain.

A court settlement has the same structure as a judgment, as provided by article 310 ACPC. So, the court settlement contains: the introduction, reasoning and operative part.

i. Example of a court settlement (solved through mediation):

"No of Judgment 11-2012-5082-1665 Date of registration: 08.05.2012
Date 18.06.2012

Judgment

The District Court of Durres *(introduction part)*
Judge: _____
Assisted by court recorder_____, today on 18.06.2012, after reviewing the civil case between:
Claimant: _____, fatherhood, motherhood, DOB, education, address, civil status, ID number.
Respondent: _____ fatherhood, motherhood, DOB, education, address, civil status, ID
Object (Petitium): Dissolution of marriage; Approval of agreement regarding the consequences after the dissolution of the marriage.
Legal Provisions: Article 125, 132, 146 Family Code

At the end of the hearing, parties respectively required as follows:

Claimant: Dissolution of the marriage without determining the fault and approval of the agreement with regard to the consequences;
Respondent: Dissolution of the marriage without determining the fault and approval of the agreement with regard to the consequences;

After reviewing the case, the Court FINDS THAT: *(reasoning part)*

Claimant ___is seeking the dissolution of the marriage with the Defendant _____, without determining the fault and also regulation of the consequences that come from the dissolution of the marriage, in relation to exercising parental responsibility and contributing to the upbringing and education of children.

Pursuant to articles 51 and 320 ACPC, the court finds that there is substantive and territorial jurisdiction to resolve this conflict as it is the court of the place of marriage and residence of the spouses.

In the conciliation session dated 31.05.2012, the court suggested to the parties the alternative solution of the case, thus respecting its legal obligation based on law 10385 dated 24.02.2011 "On mediation in resolving disputes".

After the court obtained the consent of the parties, with the decision dated 31.05.2012, it passed the case for settlement through the mediation office.

On 13.06.2012, the mediation office notifies the court of the agreement reached between the parties regarding the regulation of the consequences that come from the dissolution of the marriage.

Before the court considered the request and the conclusion of the court session pursuant to article 126 of the Family Code, it first heard separately each of the spouses, then the two together, without the presence of their representatives and finally held the court session with the presence of the parties and representatives.

At the preparatory session, the spouses were heard separately and both stated that there is no possibility of reconciliation and that they have a common opinion not only on the dissolution of the marriage but also on the settlement of the consequences, by the agreement made in the presence of the mediator ___ dated 13.06.2012.

In that agreement, the parties have stated that they agree on the dissolution of the marriage and have foreseen the terms of the agreement for the settlement of the consequences that come from the dissolution of the marriage as:

"*Leaving the child ____ DOB____, for raising and educating to the Respondent ____.*

Claimant has the right to meet his child ___ every Saturday from 10:00 to 16:00. Claimant will pick up the child at the Respondent's residence and hand it over to the Respondent's residence at the appointed time, and has the right to keep him the first two weeks of August of each year in his or her home.

Claimant is obliged to pay the alimony for the child ____ in the amount of 15,000 lek per month. Respondent ___ after the dissolution of the marriage takes the surname, he/she had before the marriage."

During the hearing, the parties stated in the presence of each other that it was their real and free will expressed in the agreement on the dissolution of the marriage and the regulation of the consequences. From the evidence examined in the trial, it is proven that the Claimant ____ and the Respondent ____ have entered into marriage on 31.03.2010 and the Respondent before the marriage had the surname "____" and after the marriage took the surname "____" This fact is proved by the marriage certificate no. _____. During their marriage, the spouses gave birth to their son _____ on 18.05.2010, a fact that is proven by the family certificate no. _____ date 03.05.2010 and birth certificate.

Regarding to the reasons of the dissolution of the marriage, the parties declare that due to constant quarrels and disputes, as a result of excessive jealousy, they have terminated their joint life, losing the marriage, its function and both spouses have expressed the will to dissolve the marriage. Based on article 127 of the Family Code, the court decided to dissolve the marriage after establishing the conviction that the will of each party is real and each party has given its consent freely to the dissolution of the marriage.

By the agreement made in the mediation office of Durres, in the presence of the mediator ___ on 13.06.2012, the spouses have provided the conditions of the agreement with regard to the consequences that come from the dissolution of the marriage, such as:

"*Leaving the child ____ DOB____, for raising and educating to the Respondent ____.*

Claimant has the right to meet his child ___ every Saturday from 10:00 to 16:00. Claimant will pick up the child at the Respondent's residence and hand it over to the Respondent's residence at the appointed time, and has the right to keep him the first two weeks of August of each year in his or her home.

Claimant is obliged to pay the alimony for the child ____ in the amount of 15,000 lek per month. Respondent ___ after the dissolution of the marriage takes the surname, he/she had before the marriage."

The court, after getting convinced that the will of each party is real and free, concludes that the agreement regulating to the consequences of the dissolution of the marriage must be

approved, as the agreement sufficiently ensures the interest of the child and spouses and is also signed by the parties in the court recording.

The court in reaching this conclusion takes into account not only the will of the spouses, but also the age of the child (2 years old) which due to the bio-physiological needs of the child needs the presence of the mother and due to good living conditions as the Defendant declared at the hearing.

Regarding the surname, article 146/1 of Family Code provides that: "The spouse who has changed his surname by marriage, after the dissolution of the marriage takes the surname he had before the marriage. Defendant ____ after the dissolution of the marriage has the right to take the surname he had before the marriage.

Regarding the above, the court concludes that the marriage should be dissolved and the agreement on resolving the consequences should be approved

THEREFORE

Court, based on articles 306, 309 ACPC and articles 125, 126 and 127 of Family Code

DECIDES *(operative part)*

1. Dissolution of the marriage between the spouses;
2. Approval of agreement dated 28.12.2012 through which the parties have agreed on the following terms:
   "Leaving the child ____ DOB____, for raising and educating to the Respondent ____. Claimant has the right to meet his child ___ every Saturday from 10:00 to 16:00. Claimant will pick up the child at the Respondent's residence and hand it over to the Respondent's residence at the appointed time, and has the right to keep him the first two weeks of August of each year in his or her home.
   Claimant is obliged to pay the alimony for the child ____ in the amount of 15,000 lek per month.
   Respondent ___ after the dissolution of the marriage takes the surname, he/she had before the marriage."
3. After the judgment will become irreversible, one copy of this judgment will be sent to the Civil Status Office of the Administrative Unit No. 3, Durres;
4. Parties are in charge of the expensive costs.
5. Against this judgment an appeal can be submitted to the Appeal Court of Durresi within 15 days, starting this time limit from the next day of the announcement of the Judgment.

It was announced in Durres on……"[57]

ii. Example of operative part of a court settlement (solved through reconciliation reached during the hearing):

'The court decides:
1. The settlement by agreement of the civil case with no. Reg. Them 106/1035 (11217-00667-51-16), dated 06.04.2016.

[57] Judgment of District Court of Durres No 11-2012-5082-1665, dated 18.06.2012.

2. Approval of the Act-Agreement with no. Rep. 129 and no. Kol 58, dated 07.02.2017 of the notary Mrs. R. K, member of the Chamber of Notaries Tirana, for the resolution of the judicial conflict by agreement.
3. Act-Agreement with no. Rep 129 and no. Kol 58, dated 07.02.2017 of the notary Mrs. R.K, member of the Tirana Notary Chamber, for the resolution of the judicial conflict in accordance will be attached and becomes an integral part of this judgment.
4. This judgment, in its final form, constitutes an enforcement title.
5. Attached to this judgment is issued the enforcement order.
6. A special appeal is allowed against this judgment within 5 days in the Shkodra Court of Appeals, starting this deadline from the day after the announcement of this decision. For the third default parties, this deadline starts from the next day of notification of this judgment.
It was announced today in Shkodra, on 07.02.2017."[58]

iii. Example of operative part of a judgment for referring the case to the mediation:

"*The court decides:*
1. *Referring the case for mediation solution;*
2. *The time limit for submitting an agreement or for continuation of the process is 2 months;*
3. *Suspension of the procedure for this period of time*."

10.1.2 What formal requirements must be satisfied (e.g. signature of the parties; service)?

According to article 158/ç (3)(4)(5) ACPC:
When reconciliation is reached before starting the hearing, a record is held, which is signed by the parties. The judge approves the reconciliation by a judgment (court settlement).
In case of submission of an agreement obtained through reconciliation or mediation, the court decides to approve it, if the latter is not inconsistent with the law.
When 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 judgment, which in any case it should not be against the law.

The structure of the court settlement is provided in point 10.1.1 above.

The settlement provided by the parties reached through mediation should identify: a) the parties; b) the description of the dispute; c) the obligations and conditions that the parties impose on each other and the manner and term of their fulfilment; ç) the signature of the parties and the mediator. The deadline for the fulfilment of the obligations set out in the agreement is decided by the parties in agreement with each other. The agreement shall be in writing and shall contain clear and precise obligations.[59]

10.1.3 How are the parties identified?

The answer of this question is provided in the point 10.1.1 above.

[58] Judgment of District Court of Shkodra No. 147(515), dated 08.02.2017
[59] Article 22 of the Mediation Law No. 10385 dated 24.02.2011, amended.

10.1.4 What (substantive) legal relationships can be settled in a court settlement?

The answer of this question is provided in the point 10.1 above.

10.2 When does a court settlement become enforceable?

A court settlement (a judgment approving or rejecting the approval of a settlement reached by the parties through reconciliation or mediation) can be challenged by way of a special appeal to the Court of Appeal. The legal time for special appeal is 5 days instead of 15 days that is the legal time for ordinary appeal.[60] The court settlement becomes enforceable under the same way as a final judgment become. So, if none of the parties exercises the right of appeal, or the appeal is not accepted by the court, or the judgment of the first instance on the court settlement is upheld by the court of appeal a court settlement become enforceable.

10.3 How are (singular and universal) successors of parties affected by the judgment?

Comment: *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible.*

The answer is the same as at section 7.3, since a court settlement is equivalent to a judgment.

A judgment that has become irreversible shall be mandatory for parties, their heirs, for the people who take away rights from the parties, the court that has issued the judgment and for all other courts and other institutions. A judgment that has become irreversible 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. (art. 451/a ACPC)

When succession of the parties, either of the creditor or the debtor, occurs after the rendering of the judgment, during enforcement proceedings, the interested persons must show to the Enforcement Officer a certificate of inheritance issued by notaries. Exception to the rule provided for in the judgment apply equally to court sentiment. (For more see point 7.3 above)

The Enforcement Order 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. (art 520 ACPC)

10.3 If applicable, describe how the legal relationship, once settled, can be amended?

The effects of a court settlement are equivalent to those of a judgment. Against a court settlement or a judgment on rejection of the agreement of the parties (through mediation or reconciliation), a special appeal can be exercised. (art. 158/ ç (6) ACPC) Once a court settlement becomes *res judicata*, it can be revised by the same way as an irreversible judgment.

[60] Artivcle 158/ ç (6) ACPC.

10.4 If applicable, describe how (under what circumstances) a court settlement can no longer be considered enforceable?

Albanian law does not provide for any time limit after which a court settlement (even a judgment) cannot longer be considered enforceable. According to article 616 ACPC, enforcement is ceased:
a) when the debtor presents to the Enforcement Officer the statement signed by the creditor, duly certified, that he has paid the amount indicated in the enforcement order, or a payment note from the post office or a bank letter in which it is certified that the amount indicated in the enforcement order has been paid to the benefit of the creditor;
b) when the creditor renounces in writing from the enforcement;
c) when the court declares, by a judicial final judgment, according to article 609 ACPC (action for invalidity of the enforcement title), that the enforcement 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 judgment of the court which has become irrevocable the action of the debtor in conformity with article 610 ACPC (appeal against the actions of the Enforcement Officer), or of the third person in conformity with article 613 ACPC (action of the third person for requiring the object) accepted.

10.5 If applicable, describe how errors in a court settlement can be remedied and the recourses that are available against a notarial act, whether independently or during enforcement proceedings.

As it is explained above a court settlement has the same effects as a final judgment. Therefore, the answer is provided in the point 3.9 above.

Part 11: Enforceable notarial acts

11.1 Briefly describe the competence the notary holds in civil and commercial matters in your Member State.

According to article 62 of the Law No. 110/2018 "On the Notary" among other competences, the notary has the power to draft notarial acts, effect authentications, certifications and verifications in all matters, including but not limited to:

- drafting testaments,
- issuing legal/testamentary inheritance certificates;
- drafting notarial acts, compiling drafts on other legal actions and documents, giving out copies of documents or abridged versions thereof
- legalising the signatures of the citizens affixed on various acts;
- drafting and taking part in the drafting of acts of commercial enterprises;
- drafting notarial acts, powers of attorney, contracts, agreements, statements and other documents being requested by interested persons, as well as other acts and actions, which under the law fall within the subject matter competence of the notary;
- rejecting the accomplishment of notary acts and transactions, as long as the documentation being submitted by the requesting party is not comprehensive, or the scope or contents are at variance with the law and the general principles of law, or in other instances where the notary is personally convinced that the requested notary act or transaction is fictitious.

The notary has the power to advise parties in all legal matters relating to notarial acts or actions, in particular but not limited to the drafting of contracts and agreements of all kinds and to assist in the processing of transactions.

11.2 **Is (can) a notarial act be considered an enforcement title in your respective Member State/Candidate Country? If so, briefly present, how the concept of a notarial act as an enforcement title is defined in your national legal order**.

Comment: *If the definition is provided by a provision of law, then please provide the citation to the exact article/paragraph of that rule and an English translation.*

Yes, according to article 510(d) of the ACPC notarial documents containing monetary obligations as well as acts for granting bank loans or acts for granting loans from non-bank financial institutions are enforcement titles.

11.3 Is, according to your domestic legal order, a notarial act an enforcement title *per se* or must it contain additional conditions/clauses to be considered as such?

Comment: *For instance, in Slovenia, notarial acts are considered enforcement titles only if they contain a so called 'direct enforceability clause'.*

A notarial act is not an enforcement title *per se.* The Albanian courts are the authority to declare if such an act can be an enforcement title, through issuing an enforcement order. The enforcement order is a judgment that establishes the existence of an enforcement title capable of being enforced and consequently orders the enforcement authority to enforce the content of that enforcement title.

The competent court for issuing the enforcement order (in the case when the enforcement title is a notarial act) will be determined in accordance with article 49 of the ACPC, which provides that: 'Actions, requesting obligatory enforcement on objects, are brought in the court of the place where these objects are or the biggest part of their value is. Actions requesting obligatory enforcement 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 examination of the request for issuing the enforcement order is conducted by the judge without the presence of the parties. The court issues the enforcement order based on the documents filed by the applicant.

The enforcement order contains: a) the data identifying the debtor and creditor; b) the origin of the obligation; c) the concrete obligation deriving from the enforcement title until the moment of issuance of the enforcement order; ç) when the enforcement title, for which an enforcement 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. (art. 511 ACPC)

11.3.1 If there is a certain clause (that constitutes the notarial deed an enforcement title) please set out an example of such a clause (cite an example clause). Furthermore, explain if there a difference in said clause if the deed refers to monetary or non-monetary claims?

As it is explained in point 11.2 above, according to article 510(d) ACPC only (i) a notarial document containing monetary obligations as well as (ii) documents for the grant of bank and non-bank financial institutions loans can be enforcement titles.

Usually the notarial act capable of being enforceable contains the expression that: 'The parties declare that they agree, recognize and acknowledge that this notarial statement constitutes an enforcement title'. However, this citation does not make a notarial act an enforcement title. It is the court which assesses the capacity of the notarial act to become an enforcement title and issue an enforcement order.

With regard to the criteria's that the court evaluates when deciding on whether or not a notarial act is an enforcement title, one should refer to the Unified Judgment of the Joint Chambers of the High Court No. 980 dated 29.9.2000, which aims to clarify (i) what is meant by notarial acts containing monetary obligations in terms of the enforcement title; (ii) comparison of these acts with the bill of exchange, as the most striking one to highlight their nature and features.

According to the said Unified Judgment, "a two-pronged legal action (contract), whether a bilateral contract, such as a contract of sales or a one-sided contract, such as a loan contract, cannot be an enforcement title. For an act issued by a competent state body, or prepared and certified by a public servant, under the conditions explicitly provided for by law, to be an enforcement title, it must contain a recognized, precisely defined, and a payable obligation, which is not related to meeting certain deadlines and above all, unconditional from other circumstances or from other mutual obligations.

The notarial act as an enforcement title must itself contain a legal action with one-sided obligation for the payment of a certain sum of money. Also, the enforceable obligation contained therein cannot be contested for its non-existence at the time of drafting and signing the act, nor there is a need to prove it. It is presumed true. The act of payment of a sum of money, drawn up in the form of a notarial declaration, being an enforcement title, may be challenged only on grounds of falsehood or on grounds provided for in section 609/1 ACPC (invalidity of enforcement title).

The notarial act of paying a sum of money as an enforcement title resembles in its content to a bill of exchange, but differs from it because it does not have the quality of a valuable letter and, therefore, cannot be used, marketed as such.

A notary act as an enforcement title may also contain an obligation arising from a previous contract, or, more broadly, from any other prior legal action to which the debtor has been a party. This new obligation, which often does not extinguish previous liabilities, as it is assumed by the debtor unilaterally and unconditionally, gains an independent existence."

11.3.2 Is the debtor's consent to direct enforceability considered to be part of a notarial act?

As it is explained above, usually the notarial act capable for becoming enforceable contains the expression that: 'The parties declare that they agree, recognize and acknowledge that this notarial statement constitutes an enforcement title'. But this citation does not make notarial act an enforcement title. It is the court which assesses the capacity of the notarial act to be enforceable.

11.3.3 If the previous question is answered in the positive, can such consent be of a general nature or specific and concrete to the debtor's obligations arising from the notarial act?

The answer of the question above is negative.

11.4 How is a notarial act structured in your domestic legal order? What elements must it contain?

The notarial act shall be drafted by the notary in the presence of the parties and shall contain:

a. the number of repertoire and collection, the electronic identification number of the act and the venue of drafting of the act;
b. the day, month and year of drafting, the type of act, the time and the minute when the act was started and finished, when applicable;
c. the addresses of all parties;
d. the detailed description of the circumstances, the condition of the parties that sign the act and any other elements which occur in the presence of the notary;
e. the name and surname of the notary and the location of the notary office;
f. the name and the last name, the father's name, the date of birth and the residence of the parties, the name and the seat when it is the case of a legal person; the name, the fatherhood and the last name of their representatives and of any other person participating in the act, and the verification made by the notary regarding the identity of the parties, their civil status, their legal capacity and their capacity to act;
g. the statements of the parties and the acts presented by them;
h. the clear specification of the objects that compose the object of the act with all their qualities and distinguishing signs. When the items are immovable, they shall be identified by the location where they are situated and their exact boundaries.
i. In the act shall be mentioned serious occurrences that may have been verified during its editing, when the parties require such thing;
j. the documentation to be attached to the act and being an integral part of the latter;
k. the fact that the notary read aloud every word and explained the act to the parties and their statements that they have understood and accepted it, as well as the fact of signing in the presence of the notary.
l. the signature of the parties and of all the persons present in the notarial act, and the notary's signature and seal.[61]

[61] Article 105 of the Notary Law 110/2018.

11.5 What personal information must be specified in the notarial act for the purposes of identifying the Parties?

As it is explained above, the notarial act should contain the name and the last name, the father's name, the date of birth and the residence of the parties, the stated addresses of all parties, the name and the seat when it is the case of a legal person; the name, the fatherhood and the last name of their representatives and of any other person participating in the act, and the verification made by the notary regarding the identity of the parties, their civil status, their legal capacity and their capacity to act.

11.6 Must a notarial act, considered to be an enforcement title, contain a threat of enforcement?

A threat of enforcement can be included (and usually it is included) into a notarial act, but this is not a requirement by law and does not affect at all the enforceability of the act. It is the court, the authority that decides case by case for the capability of a notarial act to become or not an enforcement title.

11.7 If applicable, how lengthy and important is the part of the notarial act, which contains warnings and explanations by the notary?

It is explained above.

11.7.1 Is the notary obliged to explicitly warn the parties about the direct enforceability of the act?

The notary has a duty to inform natural and legal persons, when they carry out notarial acts to enforce their rights and protect their legitimate interests, as well as to warn over the legal consequences emerging out of the notarial acts, in order not to have their interests impaired due to the lack of their knowledge of the law.[62] Therefore, in response to the question, the notary is obliged to explicitly warn the parties about the possibility of enforceability of the notarial act.

11.7.2 Is there a need for parties and/or the notary to sign each page of a notarial act, to be considered valid?

Notarial acts are duly signed by the participants in the notarial act before a notary after the notary has edited the act and has announced its contents and read aloud every word of the act to the parties. The signature must be accompanied by full name and surname of the parties. The parties put their signature on every page of the notary act and at the end of the notary act they shall place their name, last name and their signature. Persons being representatives participating in the notary act shall highlight this fact at the end of the notary act. In this case a copy of the representation act shall be attached to the notary act. The Notary notes all the above-mentioned

[62] Article 63 of the Notary Law 110/2018.

actions in the notary act.[63] The notarial act should contain the signature of the parties and of all the persons present in the notarial act, and the notary's signature and seal.[64]

After the notarial acts and actions are edited and signed by the parties and the notary, they are registered and reflected simultaneously in the general manual register of the notarial acts and actions and in the electronic one, until the establishment of the electronic register where the acts will be kept only electronically.[65]

11.8 What are the consequences if the parties fail to meet the formal requirements for a valid notarial act?

If a notarial act has not been performed in the form required by law, the court will not issue enforcement order.

11.9 What kind of (substantive) obligations, arising out of legal relationships and contained in a notarial act can become directly enforceable, according to your domestic legal order (e.g. mortgage)? Conversely, are there legally valid obligations, which cannot become directly enforceable due to restrictions in legislation or due to judicial decisions?

Comment: *For instance, in Slovenia, taxes, which arise from the claim-enforcement procedure, cannot be directly enforced by the creditor. The same applies to some bank products.*

Answer is provided in point 11.3.1 above.

11.10 Is it possible that conditional claims, contained in a notary act are directly enforceable? If so, are there any special conditions, which have to be met in notarial acts or in enforcement procedure?

Answer is provided in point 11.3.1 above.

11.11 Can obligations, contained in a directly enforceable notary deed, be contained in attachments to the notarial act or must they be set out specifically within the text of the act?

The obligation should be contained in the notarial act, which should be signed by the parties and notary as it is explained above.

[63] Article 102/1 of the Notary Law 110/2018.
[64] Article 105(h) of the Notary Law 110/2018.
[65] Article 106(2) of the Notary Law 110/2018.

11.12 Is it possible for parties to conclude a contract wherein they set up a legal (contractual) relationship and only later bring said contract to the notary in order to confirm the direct enforceability of obligations, arising out of the contract?

In such a scenario, there is no reason for the parties to address to the notary. As it is explained above, the fact whether or not there is a phrase related to the enforceability of the notarial act does not make it neither enforceable nor non-enforceable. In such a case, the parties can file to the court a request for issuing an enforcement order. If the court assess that the notarial act meets the criteria for enforcement, then it issues the enforcement order.

11.13 Must the notarial act include the specification of the time period in which the obligation of the debtor is to be performed? In conjunction, is there the possibility that a notarial act is directly enforceable even if the time period has not yet expired? If so, under what conditions?

According to the Unified Judgment of the Joint Chambers of the High Court No. 980 dated 29.9.2000, which aims to clarify what is meant by notarial acts containing monetary obligations in terms of the enforcement title, states that: "For an act issued by a competent state body, or prepared and certified by a public servant, under the conditions explicitly provided for by law, to be an enforcement title, it must contain a recognized, precisely defined, and a payable obligation, which is not related to meeting certain deadlines and above all, unconditional from other circumstances or from other mutual obligations." It means that, in order to become an enforcement title, a notarial act must not include a time period in which the obligation of the debtor should be performed.

11.14 Disregarding EU legislation, are there any special restrictions regarding recognition and enforcement under the private international law of you Member State, pertaining specifically to foreign notarial acts?

The Albanian regime on recognition and enforcement of foreign judgments is regulated by Conventions and bilateral agreements signed and ratified by the Republic of Albania and in their absence, by articles 393 to 398 ACPC.[66] As it is noted above, Albania has ratified the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1st of February 1971, but has not signed any Supplementary Agreement with any of the Contracting States of this Convention. Therefore, this Convention is inapplicable. Albania has also signed bilateral agreements with respect to the recognition and enforcement of the foreign civil and commercial judgments with Bulgaria, Macedonia, Turkey, Greece, Russia, Rumania and Hungary. These bilateral agreements are in force, but their provisions are really obsolete in some respects.

None of the provisions of the above treaties provides the possibility for recognition and enforcement of a foreign notarial deed in Albania. According to the ACPC and the Albanian International Private Law, only foreign judgments and foreign arbitral awards can be recognized in Albania.

[66] Article 393 ACPC

Recently, the Appeal Court of Tirana, by a decision of 23.02.2017[67] has expanded the scope of application of the provisions on recognition of a foreign judgments (articles 393-398 ACPC), including orders issued by the courts of other states, reasoning that: '*It is true that the Albanian Civil Procedure Code does not provide explicitly for the procedure for recognizing an electronic obligation order, as it is the case in many European countries, and as it is envisaged to be included in our Code, as a measure of effective adjudication, but the decision that resulted at the end of this procedure has the character of a court decision with respect to the obligation of the debtor to make the payment according to the contractual obligation.*' By this way of reasoning, the Appeal Court of Tirana has recognized an Electronic Obligation Order No. 11468/2015-RG, No 5744/2015, dated on 24.11.2015, issued by the Court of Bergamo in Italy.[68]

11.15 Is it possible to bring grounds of objection in enforcement proceedings, concerning not only enforcement proper (execution), but opposition to the claim itself? In other words, can the debtor raise grounds against the claim contained in the notary act in enforcement proceedings?

Yes, it is possible. ACPC provides for the action on the invalidity of the enforcement title and an enforcement title might be a notarial act. The debtor may request to the competent court of the place of enforcement to declare that the enforcement title is invalid or that the obligation does not exist or that it exists to a smaller amount or is extinguished subsequently. The time limit for presenting this action is 30 days from receipt of the notification on the beginning of the mandatory enforcement. (art. 609 ACPC)

In these cases, the court may decide to suspend the enforcement of the judgment with or without a guarantee. When the enforcement 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 enforcement, 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 enforcement 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 enforcement 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.'

11.16 If your domestic legal order does not operate with enforceable notarial acts, how would you enforce a foreign enforceable notarial act?

The Albanian legal order does not provide for any provision with regard to the enforcement of foreign enforceable notarial act. Therefore, the latter cannot be recognized and enforced in the Republic of Albania.

[67] Judgment of Tirana Appeal Court, No. 40, Reg. No. 207/9, dated 23.02.2017.
[68] *Idem.*

11.17 Are there other authentic instruments under your domestic legal order, which are considered enforcement titles?

- The settlement agreement by mediation made in accordance with the article 22 of law No. 10385, dated on 24.02.2011 'On mediation for solving the disputes'.

Instructions for contributors

1. References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to examine carefully our sample references which are preceded by [•]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

1.1. Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2], [ECLI] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission, ECLI:EU:C:1990:353.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

1.2. Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.
- Art. 5 Uitleveringswet [Extradition Act].

1.3. Reference to books

1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.
- D. Chalmers et al., European Union Law: cases and materials (Cambridge University Press 2010) p. 171.

- F.B. Verwayen, Recht en rechtvaardigheid in Japan [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

1.4. Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co- editors only the name and initials of the first editor are given, followed by 'et al.'):

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), The Federal Vision (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well-known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, 'Re-Creating Legal Space for the First Law of Aotearoa-New Zealand', 17 Waikato Law Review (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, 'Bicameral Politics in the European Union', 48 JCMS (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

- [Author's initial(s) and surname(s)], ['Title of article'], [Title of newspaper], [Date], [Page(s)]: T. Padoa-Schioppa, 'Il carattere dell' Europa' [The Character of Europe], Corriere della Serra, 22 June 2004, p. 1.

1.7. Reference to the internet

Reference to documents published on the internet should present the following form: [Author's initial(s) and surname(s)], ['Title of document'], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

1.8. Cross-references

In referring to other chapters and sections of the text, as well as to other footnotes, supra is used to refer to previous sections of the contribution, whereas infra is used to refer to subsequent sections. Cross-references should never refer to specific page numbers. Thus:

- See text to n. 10 supra.
- See text between n. 10 and n. 12 infra.
- Compare n. 10 supra.

2. Spelling, style and quotation

In this section of the authors' guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as 'common' and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
- [...] the Court's case-law concerning direct effect of directives [...]
- The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.
- There is no requirement that the spouse, in the words of the Court, 'has previously been lawfully resident in another Member State before arriving in the host Member State'.
- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

2.2. General principles of style

- Subdivisions with headings are required, but these should not be numbered.

- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., 'the Court' for 'the European Court of Human Rights'). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.
- In English titles, use Title Case; in non-English titles, use the national style.

2.3. General principles of quotation

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: 'aaaaa').
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: 'aaaaa "bbbbb" aaaaa').
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].