National Report: North Macedonia

Reporters:

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Questionnaire for national reports

Revised

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]

[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.

- 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.

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".

In case of any questions, remarks or suggestions please contact project coordinators, prof. dr. Vesna Rijavec: vesna.rijavec@um.si and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si; or Denis Baghrizabehi: denis.baghrizabehi@um.si.

[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/.

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 "Plaintiff". 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.*

Enforcement proceedings may be initiated and carried out solely based on an enforcement title. Without existence of an enforcement title, no forcible enforcement can be initiated and carried out (*nulla executio sine titulo).* It is explicitly stated in the Enforcement Act: a ground for enforcement is an enforcement title ("*извршна исправа*").[10] Due to the character of the enforcement proceedings and the coercive nature of the actions and activities that are carried out in order of realization of a particular monetary or non-monetary claim, the existence of the claim that should be collected in the enforcement proceedings must be determined by a certain qualified title. In that regard, the enforcement title is a legal document that determines the existence of the claim, its due, and the identification of the parties in the enforcement proceedings in an authoritative and certain manner.[11]

There is no general definition of enforcement title in the Enforcement Act. However, the Enforcement Act sets a list of documents that have the character of enforcement titles, opting for a *numerus clausus* system: enforcement titles are only the titles that are determined by law.

Several categories of documents are listed as an enforcement title by the Enforcement Act: 1) an enforceable court decision and court settlement; 2) an enforceable decision and settlement in an administrative procedure if designated for fulfilment of a monetary claim; 3) an enforceable notary public title; 4) a decree for issuing notarial payment order; and 5) other document considered under the law as enforcement title.[12]

A court decision, as provided by the Enforcement Act, shall be considered to be a judgment, decree, payment order or other order issued by the courts, the elected courts and the arbitrations, while a court settlement shall be considered to be the settlement concluded before these courts.[13] Along with the court decision of domestic courts and arbitrations, a decision of a foreign court, under certain conditions, has a character of an enforcement title as well. An enforcement of a decision of a foreign court may be carried out in the Republic of North Macedonia if the decision meets the requirements for recognition provided by law or international agreement ratified in accordance with the Constitution of the Republic of North Macedonia.[14]

A decision in an administrative procedure shall be considered to be a decree or conclusion reached by a state administration body or a legal entity in performing their public authorizations determined by the law, whereas a settlement in an administrative procedure

[10] Article 2, paragraph 1 of Enforcement Act.
[11] A. Janevski, T. Zoroska Kamilovska, Граѓанско процесно право, книга трета, Извршно право [Civil Procedural Law, Book III, Enforcement Law] (Faculty of Law in Skopje, 2011) p. 42.
[12] Article 12, paragraph 1 of Enforcement Act.
[13] Article 13, paragraph 1 of Enforcement Act.
[14] Article 8 of Enforcement Act.

shall be considered to be a settlement concluded in accordance with the Law on Administrative Procedure.[15]

Regarding the notarial documents, the Enforcement Act provides that the notary public document shall be enforceable title if it has become enforceable according to special provision that regulates the enforceability of such document.[16] The decree for issuing a notarial payment order becomes an enforcement title after the notary certifies it as final and enforceable.[17]

The enforcement title is eligible for enforcement if the names of the debtor and the creditor, as well as the object, the type, the scope and the time for fulfilment of the obligation are specified therein. If the time limit for voluntary fulfilment of the obligation is not specified in the enforcement title, the enforcement agent shell summon the debtor to fulfil the obligation determined in the enforcement title within eight days from the day of delivery of the summon.[18]

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

The Civil Procedure Act lays down for a statutory definition of civil and commercial matters (disputes) as a subject matter of civil proceedings. Thereby, the definition of civil matter as a subject matter of civil procedure is wider than the substantive concept of civil law relations. As provided in Article 1 of Civil Procedure Act, it covers the disputes arising out of personal, family, labor, commercial, property and other civil law relations, if the law does not prescribe for some of these disputes that the court shall resolve them according to the rules of some other procedure. Even though, from the perspective of substantive law, some of these disputes do not arise out of civil law relations (for example labor disputes), they are resolved by the courts in civil procedure according to the provisions of the Civil Procedure Act.

In regard to commercial matters, the article mentioned above clearly states that civil matters are a wider category than commercial matters, as each commercial matter constitutes a "civil case" as a subject matter of civil proceedings.

On the other side, Articles 462-464 of the Civil Procedure Act provides a definition of commercial matters as a subject matter of special civil proceedings. Pursuant to these Articles, the commercial disputes include: 1) disputes arising out of commercial relations in which both parties are legal entities; 2) disputes relating to shipping and inland navigation, as well as to disputes concerning navigation law (navigation disputes), except for disputes over the carriage of passengers; 3) disputes arising out of commercial relations of owners of stores and other individuals who perform certain commercial activity in form of registered occupation, as well as disputes from the commercial relations of those persons and the legal entities; 4) disputes between the domestic legal entities and foreign natural persons and legal entities arising out of their commercial relations, as well as the disputes between foreign natural persons and legal entities.

[15] Article 13, paragraph 2 of Enforcement Act.
[16] Article 16, paragraph 1 of Enforcement Act.
[17] Article 16, paragraph 2 of Enforcement Act.
[18] Article 17 of Enforcement Act.

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

The scope of the B IA covers civil and commercial matters regardless of the nature of the jurisdiction.[19] In addition to proper civil proceedings, the B IA is also applicable when a civil or commercial claim will be enforced in non-contentious, labor or criminal proceedings. Public law disputes are not covered by B IA. Furthermore, persuant to the recital No. 12 the B IA Regulation should not apply to arbitral tribunals.

In regard to the definitions of "Courts and Tribunals" as provided for by the B IA, the following courts are established in North Macedonia: 1) primary courts ("*основни судови*"); 2) appellate courts ("*апелациони судови*"); and 3) Supreme Court ("*Врховен суд*"). Specialized courts, apart from administrative courts, are not established in North Macedonia.[20]

1.4 Briefly present the types of domestic decisions (e.g. Judgments, 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.*

Under the Civil Procedure Act[21], decisions rendered by the court shall take form either of a "judgment" ("*пресуда*") or of a decree *("решение*").

The final decision in a matter is usually rendered in the form of a judgment. By rendering a judgment, the court shall decide upon the relief claimed in respect of the principal claim, as well as upon the lateral claims.

The court decides on the merits of the claim by a judgment, except in cases for disturbance of possession, whereas a decree is rendered on the merits.

In procedure for issuing a payment order, which is separate civil summary proceedings, the decree satisfying the claim shall be rendered in a form of a payment order ("*платен*

[19] Article 1 B IA.
[20] See Law on Courts (Official Gazette of RNM, No. 58/2006, 35/2008, 150/10, 83/18,198/18 and 96/19). More information on Judicial portal of the Republic of North Macedonia; http://www.vsrm.mk/wps/portal/central/sud/!ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zizdxNTAwsvA183ANCzQ0cfV0MPEIsvYzczc30wwkpiAJKG-AAjgZA_VGElHjpR6Xn5CdBXOOYl2Rska4fVZSallqUWqRXWgQUzigpKSi2UjVQNSgvL9dLz89Pz0nVS87PVTXApiUjv7hEPwJVpX5BboSBblRSZbmjoiIAGCyrrw!!/dz/d5/L2dJQSEvUUt3QS80TmxFL1o2XzZHNDQwOEswTEdQVTcwQU1EMEhUOUoyRzc2/
[21] Article 121 of Civil Pocedure Act.

налог"). The decision on costs of proceedings within a judgement shall be considered a decree *("решение*").

Procedural matters are decided by issuing a decree *("решение*"). If the decree regarding a certain procedural issue was made and announced at the hearing, it shall be rendered and served on the parties in the written form only if an appeal is allowed against it, or if enforcement can be carried out on its ground, or if so is necessary for purposes of conduct of the proceedings.[22]

Judgments are also rendered in criminal proceedings and may include resolutions as to civil claims related to the criminal offence (for example an obligation to compensate for damage caused by the offence, etc.).[23] These judgments may also be considered enforcement titles in line of Article 13, paragraph 1 of the Enforcement Act, as stated above in 1.1.

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU 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…".*

Since North Macedonia is not a Member State of EU and thus B IA is not directly applicable, this issue has not yet been considered.

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"?

Since North Macedonia is not a Member State of EU, our national courts cannot address any question for a preliminary ruling to the CJEU.

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.*

Two types of default judgment can be distinguished in Macedonian civil procedure: 1) a judgment due to failing to submitt a statement of defence ("*пресуда поради неподнесување одговор на тужба*") and 2) a judgment due to absence at hearing ("*пресуда поради изостанок*").

[22] Article 332, paragraph 2 of Civil Pocedure Act.
[23] Article 404, paragraph 1(7) of Criminal Procedure Act.

According to Article 319 of Civil Procedure Act, when the defendant fails to submit a statement of defence within the time limit set by the court (which may not be shorter than 15 days nor longer than 30 days), the court shall render a default judgment if the following conditions are met: 1) the defendant was duly served with a copy of a statement of claim with guidance notes informing that a statement of defence must be submitted within a specified time period; 2) the merits of the claim arise from the facts stated in the action; 3) the facts on which the action is based are not contrary to the evidence submitted by the claimant or to the generally known facts and 4) there are no generally known circumstances from which it results that the defendant due to justified reasons was prevented from filing the statement of defence. The claimant may propose the court to render a default judgment for failing to submitt a statement of defence. However, the claimant's proposal is not mandatory prerequisite for rendering this judgment: the court shall ex officio render this type of default judgemnt if all prescribed conditions are met.

According to Article 320 of Civil Procedure Act, when the defendant does not appear at the preparatory hearing or at the first session of the main hearing or appears at the hearing but refuses to argue or is removed from the hearing, the court shall render a default judgment if the following conditions are met: 1) the defendant was duly summoned; 2) the claimant proposes rendering a judgment due to absence; 3) the defendant does not contest the statement of claim with the statement of defence or with any other submission; 4) the merits of the claim arise from the facts stated in the action; 3) the facts on which the action is based are not contrary to the evidence submitted by the claimant or to the generally known facts and 4) there are no generally known circumstances from which it results that the defendant was prevented to come at the hearing due to justified reasons. The court may render this type of default judgment only upon claimant's proposal.

In both situations, when rendering a default judgment, it is considered that the assertions made by the claimant in the action are true unless these assertions raise doubts that the action was brought up with the intention of circumventing the law. Namely, if the court finds that the action contains a claim which the parties may not dispose of, meaning that the claim is contrary to the mandatory rules of law, a default judgement may not be rendered.

To summarise: when rendering a default judgment, the judicial power of assessment is limited to checking whether the procedural conditions set by the law are satisfied, whether the merits of the claim arise from the assertions stated in the action, as well as to the compliance with mandatory rules of law.

Part 2: General aspects regarding the structure of Judgements

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 judgment is defined in Article 327 of the Civil Procedure Act: a written version of the judgment shall contain an introductory part ("*увод*"), an operative part ("*изрека*") and a statement of reasons ("*образложение"*).

The introductory part of the judgment contains: a proclamation that the judgment is being announced on behalf of the citizens of the Republic of North Macedonia; the title of the court; the name and surname of the single judge, or the president and members of the panel; the name and surname as well as the permanent or temporary residence of the parties and their representatives and/or attorneys; a brief indication of the subject matter of the dispute; the day on which the main hearing has been completed; indication of the parties, their legal representatives and attorneys who attended that hearing; and the day on which the judgment has been rendered.

The operative part is the core of the judgment and contains the decision by which the court satisfies or dismisses particular claims relating to the main subject of dispute and lateral claims, and the decision on the existence or non-existence of the claim pleaded to be offset. The court is bound by the motions of the parties when rendering its judgment. It may not award any party anything that has not been applied for.[24] In a judgment ordering the performance of a certain obligation the court shall also determine a time period in which the obligation is to be performed, which in principle corresponds to 15 days. [25]

The statement of reasons shall indicate: the claims raised by the parties, the facts asserted by the parties to give rise to their claims, the evidence, the findings of facts and the law applied in the rendering of the judgment.

In a default judgment, a judgment on the basis of acknowledgment or a judgment on the basis of relinquishment and in a judgement without holding a hearing, the statement of reasons shall contain only the indication of reasons that justify rendering such judgments.

Within eight days as of the day of the written preparation of the judgment, certified copy of the judgment including an instruction regarding the right to file an appeal against the judgment, shall be served to the parties.

Article 327 of the Civil Procedure Act refers to judgments; however, it is also applicable to other types of decisions, unless otherwise prescribed by law. In this regard, for example, the written version of a decree must contain introductory and operative part, while the statement of reasons shall be necessary only if by passing thereof a motion of a party has been dismissed, or contradicting motions of the parties have been decided upon, or whenever else this is required.

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.*

The structure of a judgment is defined in Article 327 of the Civil Procedure Act (see question 2.1).

Article 327 of the Civil Procedure Act

[24] See Article 2 of Civil Procedure Act.
[25] Article 314 of Civil Procedure Act.

(1)A written version of the judgment must include an introductory part, an operative part and a statement of reasons. (2) The introductory part of the judgment shall contain: a proclamation that the judgment is being announced on behalf of the citizens of the Republic of North Macedonia, the name of the court, the name and surname of the presiding judge and other members of the panel, or the name of the single judge, the name and surname, the permanent or temporary residence of the parties and their representatives and/or attorneys, a brief description of the subject matter of dispute, the day on which the main hearing has been completed, indication of the parties, their legal representatives and attorneys who attended that hearing, and the day on which the judgment has been rendered. (3) The operative part of the judgment shall contain the decision by which the court satisfies or dismisses particular claims relating to the main subject of dispute and lateral claims, and the decision on the existence or non-existence of the claim pleaded to be offset (Article 322). (4) The statement of reasons shall indicate the claims raised by the parties, the facts asserted by the parties to give rise to their claims, the evidence, the findings of facts and the law applied in the rendering of the judgment. (5) In a judgment due to failing to submitt a statement of defence, a judgment due to absence at hearing, a judgement without holding a hearing, a judgment on the basis of acknowledgment or a judgment on the basis of relinquishment, as well as in a judgment rejecting the revision as ungrounded, the statement of reasons shall contain only the indication of reasons that justify rendering such judgments.	(1) Писмено изработената пресуда мора да има увод, изрека и образложение. (2) Уводот на пресудата содржи: назначување дека пресудата се изрекува во име на граѓаните на Република Македонија, назив на судот, име и презиме на претседателот и на членовите на советот, односно судијата поединец, име и презиме, живеалиште, односно престојувалиште на странките, на нивните застапници и полномошници, кратко означување на предметот на спорот, денот на заклучувањето на главната расправа, назначување на странките, на нивните застапници и полномошници кои присуствувале на таа расправа, како и денот кога е донесена пресудата. (3) Изреката на пресудата содржи одлука на судот за усвојување или одбивање на одделни барања што се однесуваат на главната работа и на споредните барања и одлука за постоењето или непостоењето на побарувањето истакнато заради пребивање (член 322). (4) Во образложението судот ќе ги изложи: барањата на странките и нивните наводи за фактите врз кои се засноваат тие барања, доказите, решителните факти што ги утврдил, како и прописите врз кои судот ја засновал пресудата. (5) Во образложението на пресудата поради неподнесување на одговор на тужба, пресудата поради изостанок, пресудата поради неодржување на расправа, пресудата врз основа на признание или пресудата врз основа на одрекување или пресудата со која ќе се одбие ревизијата како неоснована, ќе се изнесат само причините што го оправдуваат донесувањето на вакви пресуди.

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.*

In regard to the form and structure of a judgment, there is a high level of standardization in the judicial system in North Macedonia. Besides the fact that the content of a judgment is given by the law, the formatting of the judgment is not left to the judge himself, but standardized as well. There are general standards regarding the formatting of the judgment, which includes a standardized font, font size, same margins etc. The high level of standardization regarding the form and structure of judgments is a result of several regulations and

instructions governing this issue, but also a result of the implementation of uniform IT system supporting court office operations. The templates of judgments are created in the IT system which can be used by the judges when preparing the written version of the judgement.

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

As a result of existence of general standards (see question 2.3.), there is uniformity in the lay-out of judgments. The judges follow the same style in formatting and structuring the judgment. The elements of the judgment are clearly separated by headings, which especially refer to the operative part and statement of reasons. The introductory part of the judgment starts with the proclamation that the court issues the judgment on behalf of the citizens of the Republic of North Macedonia, followed by the other elements of the introductory part. Then comes the operative part of the judgment, always clearly under the title "judgment", and subsequently follows the statement of reasons plainly marked as such.

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?*

The appellate court in North Macedonia as a second instance court may render different decisions upon the appeal against the first-instance judgment, some of which are enforceable titles. The appellate court may affirm the first-instance judgment, quash (set aside) the appealed judgment and refer the case back to the court of first instance for a new hearing, but may also rule on the substance of the case itself, reversing the first-instance judgment or deciding on the claim independently. In regard to the later, it is important to underline that according to Macedonian Civil Procedure Act, when at the session of the second instance panel it is confirmed that the judgment being appealed is based on substantial violation of civil procedure rules or on incorrect or incomplete establishment of facts, and the judgment has once been quashed, the court of second instance shall schedule a hearing and decide *in meritum.*[26]

When the appellate court affirms the first-instance judgment, reverses it or decides on the substance of the case, it renders a judgment. In cases of quashing the appealed judgment and referring the case back to the court of first instance, a decree is rendered. Appeals against a decree are always decided by a decree.

If the appeal against the first-instance judgment granting a claim is dismissed entirely and the first-instance judgement is affirmed, the operative part of the judgment of the appellate court merely states that the court dismisses the appeal entirely and affirms the first-instance judgement, which means that the claim shall be enforced in enforcement proceedings

[26] See Article 351, paragraph 3 of Civil Procedure Act.

as formulated in the first-instance judgment. In this case, the second instance judgment in the operative part always references the first instance judgment.

Should the appellate court render a judgment that reverse the first-instance judgment, the appellate court must clearly specify the extent to which the first-instance judgment is reversed and the extent to which the appeal is dismissed. In this case, the second instance judgment in the operative part references the first-instance judgment that has been reversed and then rules on the merits of the case. This type of second instance judgment is an enforceable title. The same applies in cases when as explained above, the appellate court decides on the appeal for the second time since the first-instance- judgment has been previously quashed and the case was sent back to the court of first instance.

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).*

In Macedonian civil procedure, the counterclaim is an independent action filed by the defendant against the claimant in an already pending litigation, by which the defendant in the same proceedings files its own claim against the claimant.[27]

Conditions governing the admissibility of a counterclaim are stipulated in Article 179 of Civil Procedure Act. Pursuant to these provisions, the defendant may file a counterclaim no later than the first session of the main hearing at the same court, if the counterclaim is related to the principal claim, or if those claims may be set off, or if the counterclaim requests the court to establish a right or legal relation on whose existence the decision on the principal claim relies upon, either completely or partially. Until the conclusion of the main hearing, a counterclaim may be filed only with the consent of the claimant. Without claimant's consent, a counterclaim may be filed only when the court until the conclusion of the main hearing allowed modification of the principal claim even though the defendant objected.

The purpose of filing a counterclaim is to join the litigations on the principal claim and the counterclaim for common hearing and making a single decision.[28] Whether the litigations will be joined depends on the court's assessment of the efficiency of joinder. The court may decide to split the joined lawsuits later.

The court may decide on the principal claim and counterclaim with a single judgment. The court may also render a partial judgment on the claim that first became ready for judgment.[29]

Regarding the question how a counterclaim influences the structure of a single judgment, it can be stated that it slightly affects the structure of the judgment. First, the introductory part of the judgment must specify both the principal claim and the counterclaim. Second, the operative part of the judgment must specify resolutions both with regards to the principal claim and the counterclaim, meaning that each claim is resolved in a separate item of the operative part of the judgment.

[27] A Janevski, T. Zoroska Kamilovska, Граѓанско процесно право, книга прва, Парнично право, второ изменето и дополнето издание [Civil Procedural Law, Book I, Litigation, Second Revised Edition] (Faculty of Law in Skopje, 2012) p. 409.
[28] Article 299 of Civil Procedure Act.
[29] Article 315, paragraph 4 of Civil Procedure Act.

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.?*

Under Civil Procedure Act the court may order the defendant to perform an obligation only if it has become due before the closing of the main hearing, subject to some exclusion prescribed by the law.[30] In Macedonian civil procedure 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. Namely, pursuant to Article 314 of the Civil Procedure Act, when by the judgment the party is ordered to perform a particular obligation, a time-period for the party to comply with shall be determined in the judgment. Unless otherwise determined by special regulations, the time- period for performing the obligation shall be 15 days. For obligations not consisting of monetary payments, the court may determine longer time-period. In disputes on bills of exchange and cheques this time-period shall be eight days.

The time-period for performance of an obligation shall commence with the first day upon service of a transcript of the judgment on a party ordered to perform such obligation.

On the other side, the judgment does not contain a specification of the time-period within which the judgment is not to be enforced. However, Article 14, paragraph 1 of the Enforcement Act clearly states that court decision (including judgment) is enforceable if it has become final and if the time-period for voluntary fulfilment of the debtor's obligation has expired.

The judgment does not contain a specification of the time-period after which the judgment is no longer enforceable. Nevertheless, Macedonian Law on Obligations prescribes that all claims determined by a final court decision or by a decision of another competent body, or by settlement before a court or other competent body, expire in ten years, even those for which the law otherwise provides for a shorter statute of limitations.[31]

Even though, the court has a duty to specify in the operative part of the judgment a time-period within which the obligation is to be (voluntarily) fulfilled by the defendant, there are situations when the court unintentionally omitted the specification, but nevertheless the judgment become final. In such cases, once the enforcement proceedings has been initiated, the enforcement agent shall summon the debtor to fulfil the obligation determined in the enforcement title within eight days from the day of delivery of the summon (see question 1.1).

[30] Article 312 of Civil Procedure Act.
[31] Article 368, paragparh 1 of Law on Oblications.

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.*

As explained in 2.1. and 2.2., the introductory part of the judgment among other elements lists the name and surname, the permanent or temporary residence of the parties and their representatives and/or attorneys. The personal information of the parties are usually repeated in the operative part of the judgment, where Unique Personal Identification Number (so-called "EMBG" for natural persons, and Unique Registration Number of the Subject of Registration (so-called "EMBS") for legal entities, are indicated, as well.

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*

Under the Macedonian Civil Procedure Act indication of the amount in dispute (value of the dispute) is mandatory element of the action: the claimant must indicate the amount in dispute in his/her action.[32] Only the amount of the principal claim is relevant. Interest and additional claims are not included in the amount in dispute.[33] If the claim refers to property disputes, for determining the amount in dispute, the market value of the property, subject of the dispute, is relevant, which the claimant is obliged to determine in the action. In all other cases, when the claim does not relate to a monetary amount, the value of the dispute will be assumed to be the amount of the fee base.

The assessment of the amount in dispute by the claimant is in principle binding for the court and for the defendant. However, in cases where the claimant has manifestly set the amount in dispute too high or too low, the court shall, not later than scheduling the preliminary hearing expeditiously and in an appropriate manner, determine the amount in dispute.

On the other side, the claimant may modify the claim during the proceedings. The modification of a claim is allowed until the first session of the main hearing. After the dispute has become pending, the claimant requires the consent of the defendant. The court can also allow the modification of the claim against the will of the defendant by a decree.[34] A modification of the claim is not any change in the subject matter of the dispute, but only the one specified by the law. A modification of the claim includes: 1) changing the identity of the claim, 2) increasing the existing one or 3) submitting another claim besides the existing one. On the other side, it does not include changes of the legal basis of the claim, nor reduction of the claim or changed, supplemented or corrected allegations, so that the claim remains the

[32] See Article 176 in connection with Article 98 of Civil Procedure Act.
[33] Article 28, paragraph 1 of Civil Procedure Act.
[34] Article 180 of Civil Procedure Act.

same. Nevertheless, a modification of a claim affects the amount in dispute. Once the modification of the claim is made, it is binging for the court and the court will rule on such modified claim in the operative part of the judgment, indicating that the "modified claim" is satisfied or dismissed.

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.* 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?

Under Macedonian Civil Procedure Act, the operative part of the judgment itself does not specify the underlying legal relationship that led to the award of particular obligation. This becomes part of the statement of reasons of the judgment, where the court comments on the legal assessment of the dispute. Yet, as noted above, each judgment contains information on the subject matter of the dispute. Even the introductory part of the judgement contains a brief description (indication) of the subject matter of dispute, for example, general damages, maintenance, divorce, remuneration for work, etc. Hence, if this circumstance bears further relevance, e.g. in enforcement proceedings, an enforcement agent is able to glean information on the nature of the claim and to decide whether limitations to the scope of the attachable part of the assets are applicable in such case. For example, the Enforcement Act imposes limitations to the scope of the attachable part of the income: enforcement on salary and pension, as well as on compensation instead of salary, for claim based on legal maintenance, compensation for damage caused due to illness, reduction or loss of working capacity and compensation for lost maintenance due to the death of the maintenance payer, can be implemented up to the amount of one half, and for claims on another basis - up to the amount of one third of the salary or pension.[35]

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?

Macedonian Civil Procedure Act provides for the possibility of seeking interim declaratory relief ("*прејудицијално или инцидентално барање за утврдување*"). Pursuant to Article 177, paragraph 3 of the Civil Procedure Act if the decision upon the dispute depends on whether a particular legal relation exist or not that has become disputable during the course of the litigation, the claimant may, in addition to the existing claim, put forward a claim for the court to establish whether the relation in concern exists or not, provided this

[35] Article 117, paragraph 1 of Enforcement Act.

matter lies within the jurisdiction of a court conducting the litigation. The result of this possibility is that the preliminary question (regarding the existence or not existence of a particular relation) becomes independent. The decision on this preliminary question is included in the operative part of the judgment and thus has a binding effect.

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.*

Under the Civil Procedure Act, decisions rendered by the court in regular litigation proceedings shall take form either of a "judgment" ("*пресуда*") or of a decree *("решение*").

The final decision in a matter is rendered in the form of a judgment ("*пресуда*"). By rendering a judgment, the court shall decide upon the relief claimed in respect of the principal claim, as well as upon the lateral claims. The claim may be either fully or partially satisfied or dismissed.

Procedural issues are decided by issuing a decree *("решение*"). Different procedural matters are decided by a decree, e.g. admission of evidence, joinder or separation of litigations, termination (including discontinuance) of the proceedings, scheduling and postponing hearings, entrance of an intervener in litigation, modification of claim etc. If the decree regarding a certain procedural issue was made and announced at the hearing, it shall be rendered and served on the parties in the written form only if an appeal is allowed against it, or if enforcement can be carried out on its ground, or if so is necessary for purposes of conduct of the proceedings. A decree is also issued for the costs of the proceedings. This decree is either included in the judgment, or in some cases (e.g. wasted costs or costs incurred by a party) it is issued as a separate decision.[36]

Under Macedonian law provisional measures may be tied to the litigation proceedings. According to Article 31 of the Law on Secutity of Claims, a provisional measure may be allowed before the initiation and in the course of court or administrative proceedings. The proposal for granting provisional measure may be contained in an action or submitted as a separate motion. The court decides on such a proposal by a decree.

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.*

The structure of a judgement is explained in 2.1 and 2.2 above. Different disposals of the parties such as a withdrawal of a claim or a modification of a claim may be put forward during the course of proceedings. The court itself may issue a "decision" on different procedural issues such as joinder of proceedings, entrance of an intervener etc. In such cases,

[36] See Article 121 and 150 of Civil Procedure Act.

the structure of the judgment remains unchanged. The judgment shall contain an introductory part, an operative part and a statement of reasons. Even, the drafting of the judgment does not differ significantly. However, the mentioned situations slightly affect the drafting of particular elements of the judgment, especially the operative part of the judgment which may be extended with more items. For example, in case of joinder of proceedings, the operative part shall contain court decision on each separate case, usually in separate items. On the other side, the modification of the claim does not require the court to make a specific note thereof in the operative part of the judgment in terms of including an item separate to the item containing a decision as to the merits of the case. In the operative part of the judgment the court will rule on the modified claim, usually by indicating that the "modified claim" is satisfied or dismissed. In the statement of reasons the court will explain that claimant has modified the claim during the course of litigation. As mentioned in 2.12 above, the court deals with the modification of the claim, as well as with other procedural issues, in a separate decree. Therefore, there is no need these issues to be touched upon in the operative part of the judgment. Nevertheless, the court shall briefly comment on them in the statement of reasons.

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

See the answer of the question under 2.13.

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

In the judgment dealing with the case in its entirety, the court shall decide on the costs of the proceedings. As already mentioned in 1.4., the decision on costs of proceedings within a judgment shall be considered a decree by its nature. Consequently, if the decision on the merits is not challenged, the decision on costs contained in the judgment may be challenged only by an appeal against a decree.[37] If the decision on the merits is challenged too, the appeal on costs constitutes one point of the appeal against judgment.

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

As already mentioned in 2.12, provisional measures may be granted before the initiation and in the course of litigation proceedings. They serve to ensure the success of the main proceedings, safeguarding the substantive claim. Therefore, they are granted in an interlocutory, fast-track and simplified proceedings. The court decides on the application of provisional measure separately, by issuing a decree.

[37] Article 161 of Civil Procedure Act.

Part 3: Special aspects regarding the operative part

3.1 What does the operative part communicate?

The operative part (tenor) is the core of the judgment and contains the decision by which the court satisfies or dismisses the principal claim/claims (claims relating to the main subject of dispute). It also contains a decision on the existence or non-existence of the claim pleaded to be set-off. As already mentioned, the operative part of the judgment also includes a decision on lateral claims such as interest, contractual penalties and cost of the proceedings.[38] When rendering its judgment, the court is bound by the motions of the parties. It may not award any party anything that has not been applied for.[39]

For the purpose of determining the exact scope of *res judicata*, in the judgment dismissing the claim, the operative part should clearly state which part of the claim is dismissed. In cases whereby claimant raised several claims, the operative part shall clearly indicate which claims are satisfied, and which ones are dismissed. A completely permissive judgment corresponds, with regard to its content, entirely to the claimant's motion. In a judgment ordering the performance of a certain obligation (condemnatory judgment, *"кондемнаторна пресуда")* the court shall also determine a time-period in which the obligation is to be performed, which in principle corresponds to 15 days. For obligations not consisting of monetary payments, the court may determine longer time-period. In disputes on bills of exchange and cheques this time-period shall be eight days.[40]

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.*

Even though not explicitely stated by the Civil Procedure Act, condemnatory judgments rendered by the courts in North Macedonia contain a threat of enforcement. For example, in the operative part of a judgment ordering performance of a certain obligation, the following phrase is used: "The defendant is obliged to pay the claimant the outstanding debt in total amount of XX denari as a main debt within 15 days after the receipt of the judgment, under a threat/fear of enforcement ("*под закана/страв од присилно извршување"*)." If the defendant does not pay voluntarily within the performance time-period, the claimant as a creditor ("*доверител*") may file a request for enforcement thereby initiating enforcement proceedings.

[38] Article 327, paragraph 3 of Civil Procedure Act.
[39] Article 2, paragraph 1 of Civil Procedure Act.
[40] Article 314 of Civil Procedure Act.

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)?

The operative part of judgment coresponds to the claim as defined by the claimant in a statment of claim. Hence, if the claim has a pure condemnatory character (for performing a certain obligation, e.g. to pay a sum of money), in the operative part of a permissive condemnatory judgment, the court shall declare that the claim as defined by the claimant has been satisfied and afterwards shall express the order for performance. In such a case, the operative part of the judgment does not include declaratory relief in terms of declaring that a certain legal relationship between the parties exists, and the defendant's obligation to pay results from such a relationship and it is due. The court will state these findings in the statement of reasons (so-called declaratory preamble*, "декларaторна преамбула*"), but not in the operative part of the judgment.[41] It is rather different situation when the claimant in a course of the proceedings seeks an interim declaratory relief. In such a case, the court must decide on it in the operative part of the judgement. For more details see the answer in 2.11.

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

The obligation of the defendant/debtor is specified in the operative part of judgment (e.g. the amount of debt owed to the claimant/creditor). However, two different ways of specification should be distinguished.

The due amount of main debt, as well as the costs of the proceedings are precisely specified in the operative part of the judgment, in a final and conclusive way. The specification of interests is rather different. When it comes to statutory interest, it is specified by using the formula as defined by the Law on Obligations[42] and consequently used by the claimant in the statement of claim. In cases of contractual interest, it shall be specified in the judgment as agreed by the parties in the contract (within the limitations impose by the law).[43] However, in both cases, the interest is not specified in the judgment as a total amount of money. The court shall define the interest in the operative part of the judgment by using the statutory formula or as agreed by the parties (which includes the interest rate, but it's rather complex) and by determining the time-period for which interest is to be paid (from XX….until XX). It means that the final amount of the interest will be determined on the day when the debtor shall fulfil the obligation of monetary payment, either voluntary or forcibly. In case of enforcement proceedings, the final amount of interest shall be determined by the enforcement agent on the

[41] See Janevski, Zoroska Kamilovska, supra n. 27, p. 434-435.
[42] See Article 266-a of Law on Obligations. It states that " the interest rate shall be determined for each half-year in the amount of the interest rate from the basic instrument of the open market operations of the National Bank of the Republic of Macedonia (reference rate), which was valid on the last day of the half-year preceding the current one, increased by ten percentage points in the trade contracts and the contracts between traders and public law entities, i.e. increased by eight percentage points in the contracts in which at least one person is not a trader (legal penalty interest).
[43] In the trade contracts and the contracts between traders and persons of public law, a higher rate may be agreed than the rate of the legal penalty interest that was valid on the day of concluding the contract (contractual penalty interest), but up to 50 percent higher than the determined statutory penalty interest.

day of realization of the obligation set by the judgment as an enforcement title. The same applies to the contractual penalties, when they are not defined in the contract as a total amount, but as a percentage, either for each day of delay or otherwise.[44]

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

If the claimant requests the court to prohibit the defendant from taking specific actions (*non facere*) or to order the defendant to accept the claimant's actions (*pati*), the operative part of the judgment should reflect the type of conduct to be prohibited. For example, in cases regarding copyright infringement, the wording of the operative part of the judgment will be: '[The defendant is obliged to cease the activities that infringes the claimant's copyright, such as use and duplication of its color photographs in making brochures intended for the market….].'.

Should the defendant fail to perform this obligation, the claimant may file a request initiating an enforcement proceedings before an enforcement agent for realization of non-monetary obligation according to the Enforcement Act.

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).*

Under Macedonian Civil Procedure Act, if the defendant has challenged both the basis of the claim and the amount of the claim, and in terms of the grounds the matter is ready for a decision, the court may, for reasons of expediency, first rule only on the basis of the claim (interim judgment, "*меѓупресуда*").[45] By rendering an interim judgment, the court resolves only the merits of grounds of the claim, leaving the question as to the amount of the claim to be dealt with in a subsequent judgment after the interim judgment becomes final and effective.[46] With the interim judgment the court declares that the grounds of the claim as defined by the claimant against the defendant are justified. Hence, the operative part of the interim judgement shall only include decision as to the legal basis of the claim, as follows:

'[The defendant is liable to the claimant for damages occurred in the aviation accident on 5 May 2018….].

[44] Article 260 of Law on Obligations.
[45] Article 316, paragraph 1 of Civil Procedure Act.
[46] Article 316, paragraph 2 of Civil Procedure Act states that until the interim judgment becomes final, the court shall suspend litigation on the amount of the claim.

As it is said, the interim judgement is rendered for reasons of expediency, when the grounds of the claim may be resolved quickly, while the amount of the claim (in the example above, the amount of compensation for damages) requires more extensive evidentiary proceedings and detailed findings (usually expert evidence).

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.*

Macedonian Civil Procedure Act does not contain any provision on an interlocutory judgement, as explained in the comments on the question. Of course, there is a possibility to file a request for temporary legal protection (provisional measure) in the course of litigation proceedings, but before a court competent to resolve the principal case. The court shall grant temporary legal protection (provisional measure) by rendering a decree, not a judgment.

See also answered under 2.1.2 and 2.13.3.

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?

Although the Civil Procedure Act does not contain any specific provision, filing a claim with alternative modes of its fulfillment is posiible in litigation proceedings in North Macedonia. It is allowed only as an exception - when it arises out of the provisions of substantive law. At the core of this solution are the so-called alternative obligations ("*алтернативни обврски*") - obligations that have two or more modes of fulfillment and the final subject of the obligation depends on the choice of the authorized person, either creditor, debtor or third person (*obligatio alternativa*, *duae res in obligatione*, *una res in solutione*).

If the right of choice belongs to the debtor/defendant, the claimant cannot state in the action a request for fulfillment of only one certain mode of fulfillment. The claimant must state alternative requests for fulfillment of two or more modes and ask the court to accept them all. It is the duty of the court to determine the merits of all requested modes of fulfillment, meaning that the court cannot choose which of the fulfillment mode to satisfy. Hence, the court will order the defendant to fulfil all possible modes of fulfillment (by wording ("either"- "or"), leaving the defendant to choose by what mode he will be released from the obligation.

For example, in the case of alternative accumulation of claims, the operative part of the judgment will state as follows:

'[The defendant is obliged to either repair the security system of the house in Skopje, Dresdenska Str. 15 or to pay the claimant reduced rent for the house in Skopje, Dresdenska Str. 15 in the amount of 40.000 Denari.]'

The concept is further developed in the context of enforcement proceedings in Article 21 of the Enforcement Act which states that when the debtor according to the enforcement title has the right to choose between several modes of its obligation, the creditor is obliged to appoint in the request for enforcement the object with which the obligation is to be fulfilled. The debtor has the right to choose until the creditor, even partially, has accepted the object requested in the request for enforcement.

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).*

If the court finds that the claimant's claim is not justified in substance, either fully or partially, the court shall dismiss it by rendering a judgement ("*пресуда со која се одбива тужебното барање*"). Depending on whether the claim is wholly or partially dismissed, the operative part of the judgment shall be drafted differently.

If the court wholly dismisses the claim, the operative part shall state as follows:

'[The claimant's claim (usually followed by a repetition of the exact wording of the action) is fully dismissed as not justified]'

Should the court dismiss the claim only partially; the decision of the court is usually divided into several items in the operative part of the judgment, as follows:

'[1.The claimant's claim (usually followed by a repetition of the exact wording of the action) is partially satisfied.

2. The defendant is obligated to pay the claimant the compensation for damages at total amount of 138.000 Denari.

3. The remaining part of the claim from the awarded to the amount claimed is dismissed as not justified.]'

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.*

In certain situations, the court may consider that it cannot entertain a claim due to procedural reasons (or lack thereof), for example, if it lacks jurisdiction, if the prescribed time-period for filing the action has elapsed, if the same action is already pending before a court, if res judicata exists, etc. As explained above, all procedural issues are decided by issuing a decree *("решение*"). Hence, should the court consider that it cannot entertain a

claim due to procedural reasons, it should reject the action by a decree ("*решение за отфрлање на тужбата")*.

The operative part of a decree rendered in these situations is worded as follows:

'[The claimant's action (usually followed by a repetition of the exact wording of the action) is rejected.]'

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*.

The offsetting objection (objection for compensation, *"проговор заради пребивање"*) is a special type of objection that the defendant may raise in the litigation proceedings. By the offsetting objection the defendant claims that he also has a compensatory but still unresolved claim against the claimant and asks the court to establish that both claims exist and to issue a decision declaring the claims to be set-off (*compensatio per iudicem*).[47]

In litigation proceedings where the defendant invokes set-off, the court decides on the objection for compensation with a judgment, as already mentioned in 2.1. and 2.2. The operative part of this judgment is specific and consists of three items: 1) it is determined that the claimant's claim exists; 2) it is determined that defendant's claim pleaded to be set-off exists, and 3) the claimant's claim and defendant's claim are set-off.

If the defendant's claim stated in the offsetting objection is less then the claimant's sued claim, in the operative part of the judgment the court shall order the defendant to pay the claimant the amount of its claim above the amount of the part that has been set-off. On the other hand, if defendant's claim stated in the offsetting objection has a higher value, the court may not order the claimant to pay the difference. This is due to the fact that the defendant's claim is not stated in an action, but in an offsetting objection within the limits of the claim filed by the claimant.

Having in mind the above mentioned, the operative part of the judgment shall be as follows:

' [1. It is determined that the claimant's sued claim exists in amount of ….. Denari;

2. It is determined that the defendant's claim pleaded to be compensated exists in amount of ….. Denari;

3. The claimant's sued claim and defendant's claim pleaded to be compensated are set-off.]'

If the defendant's claim stated in the offsetting objection is less then the claimant's sued claim, the operative part of the judgment shall contain a separate item as follows:

'[4. The defendant is obliged to pay the claimant … Denari as e difference between the compensated part of the claim and the claim sued by the claimant.]'

[47] See Janevski, Zoroska Kamilovska, supra n. 27, p. 406.

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.

No such specifications exist.

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

The operative part of the judgment does not contain any elements or reference to the statement of reasons, including any legal assessment made by the court.

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?*

The operative part of the judgment mandating the debtor to perform certain obligation tends to be of a condemning nature. By a condemnatory judgment the court satisfies the condemnatory claim as justified in substance and orders the defendant to pay, give, act, refrain, or miss something in favor of the claimant.[48] As already explained above, when defining this type of judgment the Civil Procedure Act also states that "the court may order the defendant to perform an obligation only if it has become due before the closing of the main hearing" (Article 312) and furthermore "when in the judgment the party is ordered to perform a particular obligation, a time-period for the party to comply with shall be determined in the judgment" (Article 314).

However, in court practice, by the wording of the operative part of the condemnatory judgment the defendant is obliged to perform a certain obligation instead of being ordered to perform it. The analysis of the operative part of numerous condemnatory judgments shows that the courts always use the wording "The defendant is obliged to….." ("*Се задолжува туженият да…..*") in terms that the court orders the defendant to perform a certain obligation.

[48] See Janevski, Zoroska Kamilovska, supra n. 27, p. 434.

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?

In certain cases, the condemnatory judgment may have modalities, such as a condemnation upon the condition of the claimant's (counter-)performance.[49] If the defendant's obligation to perform in favor of the claimant is conditioned by a simultaneous obligation of the claimant to perform in favor of the defendant (e.g. in bilateral binding contracts), the court shall order the defendant to perform a certain obligation, provided that the claimant performs his obligation at the same time i.e. proves that he is prepared to perform his obligation. The claimant's obligation to perform is not a subject of the dispute, so the condemnatory judgment does not order the claimant, but only the defendant. Hence, on the basis of this type of condemnatory judgments, the defendant cannot seek enforcement.[50]

The concept of reciprocal relationships has further been developed in the enforcement proceedings. Article 20 of the Enforcement Act titled as "Conditional and mutual obligation" addresses how the issue of reciprocal relationship affects the enforcement proceedings. If the debtor upon the enforcement title is obliged to fulfil the obligation, but under the condition at the same time the creditor fulfills the obligation towards him, the enforcement agent shall carry out enforcement if the creditor submits proof that he has secured the fulfillment of his obligation. It is considered that the creditor has secured the fulfillment of his obligation, if he has submitted the object of the obligation to the court or for the same purpose acted in another convenient way.

On the other side, it the enforcement depends on aprior fulfillment of a creditor's obligation or on occurrence of certain condition, it shall be carried out if the creditor proves that he has fulfilled the obligation, i.e. that the condition has occurred by public document or by notarized document. If the creditor is not able to prove that in such a manner, the fulfillment of the obligation, i.e. the occurrence of the condition shall be proved by a final decision issued in litigation proceedings.

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.*

The explanation on the specification of the debtor's obligation to pay interest has already been provided in 3.1.3.

Under this item, an example of the typical wording of the operative part of the judgment, including the issue of interest rate is given.

'[The defendant XX is obliged to compensate the claimant YY material damage in the amount of 861.000,00 Denari, with statutory penalty interest in the amount of the reference rate of the National Bank of the Republic of North Macedonia that for each

[49] See Janevski, Zoroska Kamilovska, supra n. 27, p. 435.
[50] Ibid.

half-year was valid on the last day of the half-year preceding the current half-year and increased by 8% points, calculated from the filing of the action on 18.07.2017 until the payment.]'

In Macedonian:

'[*Се задолжува туженият XX да му ја надомести на тужителот YY материјалната штета во износ од 861.000,00 денари, со законска казнена камата во висина на референтната стапка на Народна банка на Република Северна Македонија што за секое полугодие важела на последниот ден од полугодието што му претходело на тековното полугодие, а зголемена за 8% поени, сметано од поднесувањето на тужбата 18.07.2017 година до исплатата*.]'

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).*

In regard to the relief sought, Macedonian civil procedure provides for three types of actions:

- for determining a right or legal relationship ("*декларaторна тужба*");
- for shaping a right or legal relationship, in terms of creation, modification or termination of legal relationships ("*конститутивна тужба*");
- for imposing an obligation, which might involve paying, giving, acting, refraining from acting or accepting ("*кондемнаторна тужба*").

In particular litigation proceedings only one type of relief may be sought, but there are situations when in the action or in the course of the proceedings different relief are sought. For example, action for performance joined by a declaratory relief, or interim declaratory relief filed during the course of the proceedings. Of course, the claims to impose different obligations on the defendant may be joined, as well. All these affect the drafting of the operative part of the judgment. Let us explain these situations with some examples.

I. Example when the claims to impose different obligations on the defendant are joined and stated in the operative part of the judgment:

'[1. The defendant XX is obliged to approach with the claimant YY towards concluding, a main contract for sale of real estate - duplex apartment in Skopje, Str…. No…S., for the total purchase price of 7.420.500,00 Denari, as registered in….(specification of all relevant date of the public books/cadastre are given).

If the defendant shall not conclude the main contract for sale and proceed with the solemnization of such contract within 8 days after the receipt of the judgment, the judgment itself shall constitute a legal basis for the enrollment of the right of ownership of the described apartment on behalf of the claimant, and the defendant is obliged to undergo suchchange in the public books.

2. The defendant XX is obliged to remove the existing parquet and to replace it with new oak parquet first class, and after the replacement of the parquet to clean and paint the apartment within the time-period of 60 days after the finality of the judgment.

3. The defendant XX is obliged to pay the claimant the amount of 212.175,00 Denari as the overpaid price for the apartment; amount of 12.342 Denari for unpaid electricity bills; amount of 9,350 Denars for building a fence for internal access scales in the apartment; and amount of 49,200 Denari for unpaid rent, or total amount of 293.067 Denari, with a statutory penalty interest in the amount of the reference rate of National Bank of the Republic of North Macedonia that for each half-year was valid on the last day of the half-year preceding the current half-year and increased by 8% points, from the day of filing the action on 19.02.2018, until the final payment, all within 15 days of the receipt of judgment, under the threat of enforcement.]'.

II. Example of the operative part containing positive declaratory relief:

'[It is determined towards the defendant that the claimant has the right to own a house 200 m2 with a yard 320 m2, in Skopje, Str. No…., CP No., registered in a property list No.]'

III. Example of the operative part containing negative declaratory relief:

'[It is determined that the defendant has no right to ask the claimant to compensate the damages caused by the shortage in the amount of 152.300 Denari in the defendant's shop in Skopje, Str. No. for the period from 1.12.2017 to 03.04.2018, when the claimant was the manager of that store.]'

IV. Example of the operative part of the judgment for cancellation of legal relationships:

'[The gift contract concluded between the claimant as a donor and the defendant as a donee, and solemnized by the notary public…under ODU No., by which the claimant gave the defendant the house in Skopje, Str. No., is annulled due to a threat.]'

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?*

According to the established technique of drafting judgments in North Macedonia, no attachments are appended to judgments. However, sometimes the operative part of the judgment contains the references to some documents (e.g. property lists, notarial documents, court judgements or settlements, building plans, etc.) that the claimant himself includes as an integrative part of the action. Yet, these documents are not attached to the judgment, but commented in the statement of reasons respectively.

An example of the operative part referring to some documents may be set as follows:

'[It is determined that the disputed right of the defendant XX, as a separate creditor in insolvency proceedings, on real estate registered in property list No. for cadastral parcel No., with all accessories, extensions and upgrades, on the basis of a court settlement L.No.764/17 of 07.07.2017, does not exist.]'.

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.*

The operative part of the judgment must be comprehensible, clearly determined, consistent and complete in terms of comprising all the elements as set by the Civil Procedure Act. If the operative part is incomplete, undetermined, incomprehensible or inconsistent, it constitutes a substantial violation of civil procedure rules of absolute nature ("*апсолутна сушественa повредa на одредбите на парничната постапка*"), as a ground for an appeal. Article 343, paragraph 2 of the Civil Procedure Act expressly states that a substantial violation of the civil procedure rules always exists, if (among others), the judgment has defects due to which it cannot be examined, and especially if the operative part of the judgment is incomprehensible, if it is self-contradictory or if it contradicts the grounds for the judgment.... [51]. The parties may challenge the first instance judgment on the ground of this substantial violation of civil procedure rules. But, even in case when the appeal was not filed on this particular ground, the appellate court pays attention on this ground *ex officio*[52] and consequently may set aside the judgment and refer the case back to the first instance court.

[51] See Article 343, paragraph 2(14) of Civil Procedure Act.
[52] See Article 354, paragraph 1 of Civil Procedure Act.

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?

As already explained above, the court is bound by the requests of the parties when rendering the judgment. It may not award any party anything that has not been applied for. In that regard, the operative part of the judgment must correspond to the request of the parties (statement of claim, counterclaim, offset objection, etc.). The court may not exceed the limits of the requests as defined by the parties, in particular it may not grant *ultra at extra*. Therefore, the operative part of the judgment should not deviate from the parties requests as defined in there motions, substantially. In practice, when formulating the operative part, the courts usually repeat of the exact wording of the claim as defined in the statement of claim, counterclaim etc. However, cases can be found where the court gives a clearer and more explicit wording to the operative part, even if it departs from the wording of the request, but still within the limits of the parties' requests.

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?

As already explained in 2.1 and 2.2, the structure and content of the civil judgment (including the statement of reasons) are defined in Article 327 of the Civil Procedure Act. It states that the statement of reasons shall indicate: the claims raised by the parties, the facts asserted by the parties to give rise to their claims, the evidence, the findings of facts and the law applied in the rendering of the judgment.

Furthernore, the Civil Procedure Act contains a separate provision in regard to the content of: 1) a judgment due to failing to submitt a statement of defence, 2) a judgment due to absence at hearing, 3) a judgement without holding a hearing, 4) a judgment on the basis of acknowledgment or a judgment on the basis of relinquishment, and 4) a judgment rejecting the revision as ungrounded. As, when rendering these judgements, the court does not deal with the factual ground of the case, it is explicitly stated that the statement of reasons shall contain only the indication of reasons that justify rendering such judgments.

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?*

As mentioned above, the Civil Procedure Act defines the key elements of the statement of reasons, and in a way it provides for a specific order in which the court should proceed when drafting the statement of reasons. Each of the elements constitutes a separate section within the structure of the statement of reasons, although headings for separate sections are not used, nor they are numerated. The sections usually do not interfere with each

other, but logically follow one another, so that the reasoning itself constitutes a single logical whole.

At the very outset, the claims as raised by the parties (in the statement of claim, statement of defense, counterclaim, objections, etc.) and the facts asserted by the parties to give rise to their claims must be stated. The evidence proposed by the parties is also stated, as well as the parties' request for the costs of the proceedings. Then follows the section regarding the evidence proceedings, where all evidence taken by the court shall be indicated. This is followed by an explanation of the findings of facts, in terms of stating the factual situation that has been established by the court as a ground for its decision. This is followed by the assessment of the evidence, but as a separate section of the reasoning. Next comes the legal assessment in terms of subsumption of the established facts (*praemisa minor)* under the specific provision of the law (*praemisa maior)* resulting with an answer to the question whether the requested legal consequence can be concluded from the established facts. Finally, the decision on the costs of the proceedings must be justified.

Even not specifically mentioned in Article 327 of the Civil Procedure, in the statement of reasons of some judgments it will be necessary to state findings on the existence of procedural requirements or on the rejection of procedural objections, which are decided in the judgment. Namely, the court may decide on some procedural requirements or procedural objections separately or together with the main subject of dispute. In regard to this, Article 286 of Civil Procedure Act states that if the party objects that the decision on the claim does not fall within the court jurisdiction, or that the court has no real or territorial jurisdiction, or that the same request is already pending, or that the case has been adjudicated, or that the subject of the dispute is already settled by a court settlement, the court will decide whether the objections will be discussed and decided separately from the main subject of dispute or together with it. If the court does not satisfy the mentioned objections, which were discussed together with the main subject of the dispute, or if the court after the separate hearing does not satisfy the objection and decides to continue with the main hearing immediately, the decision on the objection shall be entered in the decision (judgment) on the main subject of dispute.

4.1.2 How lengthy/detailed is the reasoning?

In principle, the statement of reasons is the largest part of the judgment. Nevertheless, the length of each statement of reasons may vary form case to case. It depends on the type and complexity of the given case (e.g. divorce v. commercial dispute; then number of the claims raised by the parties, complexity of the factual ground of the case, evidence proposed by the parties and evidence taken by the court, joinder of parties, etc.). Due to these, the reasoning of some judgement might be quite extensive, while the other quite short, although the both contain all the elements required by the law.

4.1.3 Do you find the reasoning to be too detailed?

Even though the article of the Civil Procedure Act defining the elements of the statement of reasons has never been subject of amendments and remained the same for decades, it is obvious that more recently in regard to the drafting of the reasoning the court

practice has been significantly changed. There is a trend towards increasing the length of the statement of reasons provided by the courts, so very often a lengthy and detailed reasoning can be found.

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

As already mentioned under 4.1.1, at the very outset the reasoning contains the statements regarding parties' claims and the facts asserted by them to give rise to their claims. They are usually stated in a summarized and concise manner, by endeavor to reflect the wording used by the parties.

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)?

In Macedonian judicial practice, as mentioned under 4.1.1, headings for separate sections of the statement of reasons are not used. Nevertheless, the different key elements of the statement of reasons are easily noticeable. Therefore, it is possible to make distinction between the parties' statements and the court's assessment. The parties' statements are positioned at the very beginning of the reasoning, while the court's assessment, either fact-findings or its legal assessment go afterwards. Furthermore, there is some standard formulation of the beginnings of these parts of reasoning, which clearly indicates which are parties' statements and which one is the court's assessment.

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.*

As already explained under 4.1.1 in the statement of reasons of some judgments the court may address procedural prerequisites and applications/objections made by the parties including those made after the filing of the claim. In the reasoning, the court will include findings on the existence of procedural requirements or the decision on the rejection of procedural objections, which are decided in the judgment.

To be more specific, the court may decide on some procedural requirements or procedural objections separately or together with the main subject of dispute. For instance, if the parties raise objections concerning the lack of standing or party's capacity in the course of proceedings, then the court must address these issues in the reasoning, unless such objections had previously resulted in issuing a particular decree at an earlier stage of proceedings. Or if the party objects that the decision on the claim does not fall within the court jurisdiction; or that the court has no real or territorial jurisdiction; or that the same request is already pending; or that the case has already been adjudicated or settled by a court settlement, the court shall decide whether the objections will be discussed and decided separately from the main subject of dispute or together with it. If the court does not satisfy the mentioned objections, which

were discussed together with the main subject of the dispute, or if the court after the separate hearing does not satisfy the objection and decides to continue with the main hearing immediately, the decision on the objection shall be entered in the judgment on main subject of dispute.[53]

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

The decrees on procedural issues that may be challenged by appeal independently are not necessarily included in the judgment or re-addressed respectively. On the other side, the court is required to address in the reasoning unappealable decrees issued in the course of proceedings. In the appeal against the first instance judgment, a party dissatisfied with the court's decision may assert that the first instance court issued such a decree contrary to procedural law. Therefore, it is important to have these decrees discussed in the statement of reasons in order to make possible for the parties to challenge them and appellate court to observe and decide properly in the second instance proceedings.

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?

One of the basic rules of Macedonian civil procedure is that only the operative part of the judgment becomes final. The finality of the judgment refers only to the part of the judgment which authoritatively decides on the claim, and not to the parts in which the court decision is explained. The operative part of the judgment contains the court's position regarding the claim, the counterclaim, as well as the existence of the claim raised to be set-off. It creates an individual legal norm for the litigants, which has the force of law for them. [54]

The reasoning itself is not object of the finality of the judgment. Fact-findings and legal assessment made by the court, as well as e.g. decisions on preliminary questions, which are included in the reasoning of the judgment do not constitute *res judicata.*

Nevertheless, in procedural doctrine, it has been argued that the operative part alone is rarely sufficient to individualize the claim. The elements of the operative part of the judgment do not provide sufficient ground for substantive individualization of the court decision. The reasoning of the judgment makes it possible to determine the essence of the operative part. Hence it is argued that although only the operative part of the judgment is encompassed with the effects of finality, the reasoning "participates" in finality of the operative part.

[53] Article 327 of Civil Procedure Act.
[54] See Janevski, Zoroska Kamilovska, supra n. 27, p. 457.

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.[55] 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?

The principle of *res judicata* is one of basic principles in Macedonian civil procedure. As it is generally known, the term denotes "a matter judged/decided" ("*пресудена работа*"). The essence of this principle or concept is inextricably linked to the necessity to ensure legal certainty and normal functioning of the legal order. Legal certainty will be provided if the court decision/judgment authoritatively and irrevocably regulates the legal relation between the parties and thus puts an end to the dispute between two persons regarding certain legal relation. It is a method of preventing injustice to the parties of a case supposedly finished. On the other side, *res judicata* is also a method of avoiding unnecessary waste of resources in the court system: it means release from irrational demands to be given endless legal protection, always and again for the same subject matter and between the same parties.[56]

The issue of res judicata is governed in Article 322 of the Civil Procedure Act. It reflects two key elements of the res judicata concept, namely that: 1) a matter is finally decided on its merits by a court; and 2) a matter cannot be subject to litigation again between the same parties.

In the procedural doctrine, res judicata is considered to be a complex concept. The essence of res judicata consists of several important elements, as follows:

- Res judicata is a procedural bar that prevents conducting litigation between the same parties and for the same subject matter (*ne bis in idem*). It is the so-called "negative effect of res judicata".
- Res judicata entails the possibility for a party to rely on the judgment in order to have its rights respected. The finality of judgment means that the judgment authoritatively regulates the legal relations between the parties; it is considered as an individual law for the parties (*res iudicata ius facit inter partes*). The court may not issue a new judgment on the points of dispute previously settled. It is the so-called "positive effect of res judicata".
- If a judgement has res judicata effect, a legal presumption arises that the content of the rights and legal relations determined by the final decision is considered to be true (*res iudicata pro veritate habetur*). Again, it is "a positive effect of res judicata".[57]

[55] 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.
[56] See Janevski, Zoroska Kamilovska, supra n. 27, p. 455.
[57] Janevski, Zoroska Kamilovska, supra n. 27, p. 455-456.

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

Under Macedonian Civil Procedure Act all judgments rendered in litigation procedure have the capacity to become res judicata. The type of judgment (e.g. declaratory judgment, condemnatory judgment, partial judgment, interim judgment, default judgment, etc) is not relevant in determining whether a judgment has capacity to become res judicata. The decrees, if they are decisions on the merits (in proceedings for disturbance of possession), as well as court payments orders have also res judicata effects.

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*.

Regarding the time and requirements when a judgment meets the criteria for becoming res judicata, in Macedonian procedural doctrine the distiction between formal finality ("*формална правосилност*") and substantive finality ("*материјална правосилност*") of the judgments is made. It is predominantly doctrinal distinction, since the Civil Procedure Act itself does not use these terms. When regulating the finality of the judgment (Article 322), the Civil Procedure Act refers to the so-called formal finality.

The judgment becomes formally final when it can be no longer subject of appeal (which is considered as an ordinary legal remedy). In regard to this, Article 322, paragraph 1 of the Civil Procedure Act states that judgment that can no longer be challenged by appeal becomes final if it decides on the claim or counterclaim.

The judgment becomes formally final, and thus res judicata: a) with an expiration of the time-period for filing an appeal, if an appeal is not filed; b) by renunciation of the right to an appeal; c) by withdrawal of the filed appeal; and d) by rendering a second instance judgment confirming or modifying the first instance judgment.

A judgment that becomes formally final is a procedural bar for conducting new litigation between the same parties and for the same subject matter. It may not be re-litigated once it has been judged on the merits and the judgment become formally final. During the entire procedure, the court *ex officio* pays attention to whether the case has been finally resolved and if it determines that the procedure has been initiated for a claim that has already been finally decided, the court will reject the action.[58] The formal finality of the judgment is frequently referred to as "claim preclusion", as it precludes the same case from being judged again. It is a necessary precondition for the substantive formality of the judgment.

Substantive formality is a feature of formally final judgment, which means that the judgment finally and authoritatively decides the particular case. Substantive formality refers to the content of the judgment and it is manifested through its effects. It means irrevocability of the content of the rights and the legal relations determined by the final judgment. The judgment becomes substantivly final when there is no longer any possibility to challenge it by any means of recourse (i.e. by so-called extraordinary legal remedies).

[58] Article 322, paragraph 2 of Civil Procedure Act.

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

As already mentioned under 5.1.3 the exercise of the right to appeal closely affects the moment when the case becomes res judicata. The judgment becomes formally final, and thus res judicata: a) with an expiration of statutory time-period for filing an appeal, if an appeal is not filed; b) by renunciation of the right to an appeal; c) by withdrawal of the filed appeal; and d) by rendering a second instance judgment confirming or modifying the first instance judgment.

If the appeal is filed in due time, the judgment will not yet gain formal finality (so-called "suspensive effect of the appeal"). Article 337, paragraph 2 of the Civil Procedure Act explicitly states that a timely appeal prevents the judgment from becoming final in the part that is challenged by the appeal. Moreover, a timely appeal also suspends the enforceability of the judgment, as the finality of the judgment is a precondition for its enforceability.

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?

Regarding the concept of res judicata, two types of legal remedies can be distinguished in Macedonian civil procedure: "ordinary" and "extraordinary" legal remedies ("*редовни и вонредни правни лекови*"). An ordinary legal remedy is an appeal ("*жалба*"), while extraordinary legal remedies are revision ("*ревизија*") and reopening of civil proceedings ("*повторување на постапката'*). As already mentioned under 5.1.3, filingordinary legal remedies prevents the judgment from becoming res judicata in terms of formal finality, as explained above, while filingextraordinary legal remedies prevents the judgment from becoming substantivly final. Nevertheless, the judgment which is challenged by extraordinary legal remedies has already become res juducata, and thus enforceable. For further details see 5.1.3.

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?

It has already been mentioned (under 4.4.) that one of the basic rules of Macedonian civil procedure is that only the operative part of the judgment becomes final, and thus res judicata. The finality of the judgment refers only to the part of the judgment which authoritatively decides on the claim, and not to the parts in which the court decision is explained. In other words, res judicata is restricted to the operative part of the judgment and does not extend to the reasoning or other parts of the judgment. See also the answer under 4.4.

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?*

A preliminary question ("*претходно" или "прејудицијално" прашање*) refers to a question of existence of a right or legal relationship, on whose preliminary resolution depends the decision on the merits of the claim. A preliminary question is always a question on points of law. It represents an independent legal entirety which can be decided as a main question in certain proceedings before a competent court or other body.[59]

The issue of preliminary questions is governed in Article 11 of the Civil Procedure Act. It states that when the decision of the court depends on the previous resolution of the question whether there is a right or legal relationship, on which the court or other competent body has not yet made a decision (preliminary question), the court may decide that question on its own, unless otherwise prescribed by the law. This indicates that when dealing with preliminary question the court can choose between two options: either to decide the preliminary question itself or to discontinue the litigation proceedings until the competent authority has finally resolved the question as a main issue.[60] When the litigation court decides to resolve the preliminary question on its own, the procedure for its resolution appears as an incidental procedure within the pending litigation. The decision of the court on the preliminary question has legal effect only in the litigation in which that question has been resolved.[61] It does not enter into the operative part of the judgment on the merits of the claim, but it is an integral part of its reasoning, as one of the bases on which the court builds its decision on the merits of the case. Given that the reasoning of the decision is not an object of finality, the finality of the judgment does not pertain to preliminary question on the point of law. Consequently, it has no legal force and has no binding effect outside the specific legal dispute.

It has to be pointed out that the above mentioned only applies to situations where the preliminary question has not yet been resolved as a main issue by the competent authority. *A contrario*, if there is already a final decision on preliminary question rendered by the competent body, as a main issue, it binds the litigation court, and it cannot decide on the preliminary question on its own.

[59] Janevski, Zoroska Kamilovska, supra n. 27, p. 354.
[60] See Article 201, paragraph 1(1) of Civil Procedure Act.
[61] Article 11, paragraph 2 of Civil Procedure Act.

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?

As already mentioned under 5.1.3, the claim preclusion effect of res judicata operates in Macedonian civil procedure. Namely, the so-called formal finality of the judgment is frequently referred to as "claim preclusion", because it precludes the same case from being judged again.

Once a final judgment has been rendered on a particular case, subsequent courts who are confronted with an action that is identical to or substantially the same as the earlier one shall apply the *res judicata* principle to preserve the effect of the first judgment. All subsequent actions are not admissible, and should be rejected. It brings us to the question of identical claims, i.e. identity of claims ("*идентитет на тужените барања*") as one of the most complex question in the procedural doctrine. Let us briefly explain the very essence of the dominant opinion.

In order for a second action to be declared inadmissible on a motion of *res judicata*, the action must be identical to the first one in the following manner: 1) identical parties, 2) identical facts as a ground of a claim (identical/same cause of action) and 3) identical requests/claims in both actions.

The legal ground invoked in the action in terms of a plea for legal consequence under certain legal provision does not make difference in determining whether the actions are same. Under Macedonian Civil Procedure, stating the legal ground of the claim does not constitute amandatory element of the action. The court shall act upon the action even when the claimant did not state the legal ground of the claim, and if the claimant stated the legal ground, the court is not bound by it.[62]

As a consequence, a new claim cannot be invoked for the same cause of action but on a new/different legal ground. The ground for making a decision is a certain life event observed objectively, legally colorless, and not the legal qualification that arises from that event. If the court dismisses the claim when it finds that its merits do not arise from the established facts and by applying certain legal provisions, then the same claim cannot be re-

[62] Article 176, paragraph 3 of Civil Procedure Act.

litigated by requesting the court to consider its merits from the point of view of another legal ground. [63]

In regard to that, the Supreme Court of North Macedonia has ruled as follows:

'[When deciding, the court is not bound by the legal ground of the claim, nor by the legal qualification of the relationship out of which the claim arises, so there is res juducata when the claimant demands from the defendant the same amount of money and out of the same relationship with the defendant on the ground of a foreign exchange contract, which was previously finally decided on the ground of a loan agreement.]' [64]

On the other side, The Appelate Court in Bitola has rulled that there is no res judicata in the following situation:

'[There is no res judicata, in a situation when the first instance court previously dismissed the claimant's claim because it was not due by the end of the hearing. The finality of the decision in the part of the dismissed action is not a ban for it to be decided in new proceedings, after such a claim becomes due.] '[65]

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

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?*

In Macedonian Civil Procedure, the courts are not bound by the determination of facts in previous judgments or in other cases. As a general principal, which facts will be taken as proven is decided by the court in its conviction on the basis of a conscientious and careful assessment of each evidence separately and all the evidence together, as well as on the basis of the results of the entire procedure.[66] Consequently, in two separate cases courts will make autonomous factual findings and these findings do not have to be consistent. The court is not bound by factual findings made in other cases or by legal opinions expressed in the statement of reasons of the judgment rendered in another case. The only exception refers to facts established by a final judgment rendered in criminal proceedings. In the litigation procedure, regarding the existence of the crime and the criminal liability the court is bound by the final judgment of the criminal court by which the defendant is found guilty. [67]

[63] Decision of the Appellate Court in Gostivar, Gz. No. 954/14 of 15.07.2014.
[64] Decision of the Supreme Court Rev.No. 1338/95 of 20.11.1996.
[65] Decision of the Appellate Court in Bitola, Gz. 2365/2012.
[66] Article 8 of Civil Procedure Act.
[67] Article 11, paragraph 3 of Civil Procedure Act.

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?

In the presented situation, res judicata effects apply only to the part of the civil claim sought in civil procedure and subject to the final judgment. Without regard to the fact that the civil claim as a whole arises from the same factual and legal basis, it is possible to bring separate actions for two or more parts of the civil claim. If the part of the civil claim is being claimed in civil proceedings and the relief is sought, the remainder of the civil claim may be sought in another proceeding, since that part of the civil claim is not subject of finality of the judgment.

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)?*

Under Macedonian Civil Procedure Act a declaratory action may be positive (in which the claimant requests the court to declare (determine) an existence of a right or legal relationship) or negative (in which the claimant requests the court to declare (determine) a non-existence of a right or legal relationship).[68] The request to declare the existence of a certain right or legal relationship should be precisely defined in the declaratory action: the court itself cannot, at its discretion, declare whether the right or legal relationship exists or does not exist.[69]

In case of a negative declaratory action, the court may satisfy or dismiss the claim. When the court satisfies the claim, the operative part of the judgment shall state that a certain right or legal relationship does not exist.[70] Should the court dismiss the claim; it means that the negative declaratory relief sought is not justified. However, it does not mean that at the same time the court shall declare in the operative part of the judgment that a certain right or legal relationship exists, and thus for example, the claimant does have to pay the defendant a certain amount of money. Res judicata effects of a judgment dismissing a negative declaratory action are limited to the declaration that the claimant's negative declaratory relief sought is not justified. Hence, the dismissal of a negative declaratory action is not the equivalent of a declaration of the converse, and therefore, the defendant as a creditor cannot use it as an enforceable title. Accordingly, the defendant must submit an action for performance against

[68] Article 177, paragraph 1 of Civil Procedure Act.
[69] Janevski, Zoroska Kamilovska, supra n. 27, p. 377.
[70] 'When a claim refers to establishing the non-existence of a debtor-creditor relationship, it is not a matter of establishing a fact, but a claim for determining the non-existence of a binding legal relationship, for which the claimant has a legal interest in filing an action. 'Decision of the Supreme Court of the Republic of North Macedonia, Rev1 No.170/2016 of 26.10.2017.

the claimant initiating new litigation, in order to provide a condemnatory judgment which can be used as enforceable title.

5.4 If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment have 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).*

As already mentioned under 3.1.5 by rendering an interim judgment, the court resolves only the merits of grounds of the claim, leaving the question as to the amount of the claim to be decided in a subsequent judgment after the interim judgment becomes final and effective.[71] With the interim judgment the court declares that the grounds of the claim as defined by the claimant against the defendant are justified (well-founded).

Unlike the procedural legislation of some states, in Macedonian Civil Procedure Act, the question of the res juducata effects of an interim judgment stays open. It is stated in Article 316, paragraph 2 of the Civil Procedure Act that until the interim judgment becomes final, the court shall stay the hearing in respect to the amount of the claim. No doubt that within the proceedings for the particular dispute where the interim judgment has been rendered, it has a binding effect. The parties may not present any further facts concerning the merits of the ground of the claim, i.e. the question of the ground of the claim cannot be reopened.

But the question is whether an interim judgment has any effects outside of the pending dispute. As far as we know, this question has not been raised in judicial practice, since the courts in North Macedonia are not used to render this type of judgment. On a doctrinal level we found only one paper discussing this issue.[72] The paper supports the opinion that an interim judgment concerning the well-foundedness of a claim constitutes res judicata after it becomes final. The final interim judgment has binding effects for those to whom it refers even outside of the pending litigation in which it was rendered, as any other final decision on the existence of a certain legal relationship.

[71] Article 316, paragraph 2 of Civil Procedure Act states that until the interim judgment becomes final, the court shall suspend litigation on the amount of the claim.

[72] A. Janevski, T Zoroska Kmailovska, 'Međupresuda u parničnom postupku'[Interim Judgment in Civil Proceedings], in Collection of papers 'Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse', (2012), University of Mostar, 2012, p. 53-62.

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.

Since North Macedonia is not a Member State of EU, we found it reasonable not to answer the question under 5.5.

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?

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:

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)?

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?

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?

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?

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).*

Generally, judgments can be enforced once they fulfil the requirements to be qualified as enforcement titles. According to the Enforcement Act, a judicial decision is enforceable if it has become final and if the time period for voluntary fulfilment of the debtor's obligation has expired.[73] The time period for voluntary fulfilment of the obligation shall begin to run the day the decision was delivered to the debtor.[74]

As an exception, judicial decision can be enforced prior to its finality. The enforcement shall also be carried out on the basis of a judicial decision that has not become final if it is provided by law that the appeal shall not postpone the enforcement of the decision.[75]

Although it is not explicitly stipulated in the law, the enforcement shall be carried regarding judicial decision that has not become final if based on legal authority the court decides that the appeal should not postpone the enforcement of the decision. For ex., in civil procedure regarding disputes for disturbance of possession, due to important reasons that have to be elaborated, the court can decide that the appeal has no suspensive effect, i.e. it shall not postpone the enforcement of the decision.[76]

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

See answer under question 6.1.

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

According to the Enforcement Act, when the enforcement has already been carried out, the debtor may file a motion for counter-enforcement to the court, requesting the creditor to return to him/her what he/she obtained from the enforcement if the enforcement title is revoked, reversed, recused or repealed with a final decision or if the debtor has settled the creditor's claim prior to the initiation of the enforcement proceedings.

[73] Article 14, paragraph 1 of Enforcement Act.
[74] Article 14, paragraph 3 of Enforcement Act.
[75] Article 14, paragraph 5 of Enforcement Act.
[76] Article 414, paragraph 3 of Civil Procedure Act.

The motion for counter-enforcement may be submitted within 30 days from the day the debtor found out about the reason for counter-enforcement and no later than one year from the day of completion of the enforcement proceedings. The debtor can also realize his/her claim by filing an action but not before the expiration of the above mentioned time periods.[77]

Due to the possibility of a counter-enforcement or initiation of a separate litigation on the basis of an unjustified enrichment, the party that has initiated the enforcement procedure prior to the finality of the judgment bears the risk if the provisionally enforceable judgment is reversed or modified.

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

A security provided by the creditor before the enforcement of a judgment, is unfamiliar to the Macedonian law.

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?

There aren't explicitly stipulated rules regarding the possibility for the debtor to claim damages he has suffered by the judgment being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement.

In case of a counter-enforcement, although it is not explicitly stipulated in the Enforcement Act, in situations when the creditor collected certain amount of money from the enforcement, upon request of the debtor, with the decision regarding the motion for counter-enforcement, next to the obligation for reimbursement of what he collected with the enforcement, the court can obligate the creditor to pay an interest according to the prescribed rate for the amount for which the enforcement has been carried out from the day of completion of the enforcement to the day of reimburse of the amount of money collected with the enforcement.[78]

Also, the debtor is exempt from payment of the costs of enforcement procedure[79] in case when the enforcement procedure is suspended upon the request of the creditor or if the enforcement title is revoked, reversed, recused or repealed with a final decision.

Generally, when the enforcement title is realized in the enforcement proceedings, the debtor covers the administration fee, the price of the performed activities, the reward of the enforcement agent and the real costs and fees, but in the above mentioned cases the

[77] Article 88 of Enforcement Act.
[78] Janevski, Zoroska Kamilovska, supra n. 11, p. 82.
[79] According to the Tariff for Reward and Compensation of Other Costs for the Work of Enforcement Agents, in the enforcement proceedings the debtor covers the cost of the procedure which include: the price for administration of the enforcement case, the price for the enforcement agent's activities, the enforcement agent's reward for the performed actions, the real costs and the fees. Article 6, paragraph 2 of Tariff for Reward and Compensation of Other Costs for the Work of Enforcement Agents.

administration fee, the price for the performed activities and the reward of the enforcement agent are paid by the creditor.[80]

On the other hand, if the debtor voluntarily paid (performed) the claim after the initiation of the enforcement but prior to the moment when he found out or could have found out that the enforcement proceedings is initiated or in case when he voluntarily paid the claim upon the issued enforcement order, he has to pay only the administration fee and the price for the undertaken enforcement actions.[81]

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

See answer under question 6.1.2.2.

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

No, the answer to the previous question does not vary if the judgment was a default judgment. No distinction is made upon the type of the rendered judgment.

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

See answer under question 6.1.2.2.

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*.

Once the judgment becomes final and enforceable, the creditor may file a motion for forcible fulfilment of the claim before a competent enforcement agent. The creditor is not obliged to demand a payment from the debtor prior to initiation of enforcement proceedings. Macedonian legal order does not prescribe a suspensive period within which the creditor cannot initiate enforcement proceedings in situations when the judgment has the quality of an enforcement title, i.e. if it became final and enforceable according to the law.

[80] Article 9 of Tariff for Reward and Compensation of Other Costs for the Work of Enforcement Agents.
[81] Article 8 of Tariff for Reward and Compensation of Other Costs for the Work of Enforcement Agents.

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?

No such clause can be found in judgments rendered by Macedonian courts.

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?

Foreign judicial and arbitral decisions can be considered as enforcement titles if they are recognized and equated with domestic decisions in a separate non-contentious proceedings before Macedonian courts.

According to the Enforcement Act, an enforcement of a decision of a foreign court may be carried out if the decision fulfils the requirements for recognition established by law or an international treaty ratified in accordance with the Constitution of the Republic of North Macedonia.[82] Regarding the requirements that have to be fulfilled, they are stipulated with the International Private Law Act. This Law prescribes the rules regarding the non-contentious procedure for recognition of foreign judicial decisions as well.

Regarding other enforcement titles, the Notary Public Act stipulates that notarial document issued abroad shall have the same legal validity as it was issued under this Law, provided if there is reciprocity.[83]

If a foreign enforcement title fulfils the requirements for recognition prescribed by domestic laws it will be equated with the domestic decision and will be considered as final and enforceable document that can be enforced as any other enforcement title rendered or drawn up by domestic courts or other bodies that are authorized to issue documents that have the quality of an enforcement title.

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)?

The principal rule regarding the personal boundaries of *res judicata* is that the final judgment has a binding effect only between the parties and accordingly has no legal effect towards third persons. Yet, there are certain situations where the personal boundaries of *res judicata* are extended to persons other than the parties.

Regarding co-litigants, the final judgment affects all potential unified co-litigants. In cases when the unified co-litigation is not compulsory, the final judgment rendered in litigation where only some of the unified co-litigants participated, it also affects the potential co-litigants who did not participate in the litigation.

[82] Article 10 of Enforcement Act.
[83] Article 5 of Notary Public Act.

The final judgment has binding effects on universal or singular successors of the parties as well since they take over the legal position of their predecessors and in that regard are effected by the final judgement referring to them.

Due to the very nature of the disputed right or legal relationship, the final judgment sometimes affects third persons who did not participate in the litigation as parties. In such cases the final judgment has *erga omnes* effect.

The final judgment has effect towards certain third persons who did not participate as parties in litigation when it is explicitly determined by law. According to particular substantive legal provisions the final judgment can affect the legal position of a third person as a consequence of the legal relationship between the litigant and the third person. For ex., if it is determined with the final judgment that there is no debt of the main debtor, that judgment also affects the guarantor. In the theory, such effect of the final judgment is known as reflex effect of the finality or a horizontal effect of the judgment towards third persons and it differs from the extension of the personal boundaries of *res judicata*.[84]

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

There are situations regarding certain legal relations that exclude the possibility for the judgment to be legally binding only for the parties and not be binding towards other persons. For ex. judgments on divorce or judgments on establishing paternity are considered to have *erga omnes* binding effect.

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.*

Regarding the extension of the effects of the judgment on individual or universal successors, see answer under question 7.1.

Regarding the issue on succession of the parties in potential enforcement proceedings see answer under question 10.3.

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?

In Macedonian legal order changes to statute cannot affect the validity of a judgment or present grounds for challenge.

[84] Janevski, Zoroska Kamilovska, supra n. 27, p. 457-458.

As for the case-law, case-law of domestic courts cannot affect the validity of a judgment or present grounds for challenge.

On the other hand, Civil Procedure Act allows challenging of a judgment through the motion for repetition of the civil procedure as an extraordinary legal remedy upon a final judgment of the ECtHR. When the ECtHr determines violation of certain human right or fundamental freedom stipulated with the ECHR the party may within 30 days from the day the judgment of the ECtHR becomes final, to file a motion before a court in Republic of North Macedonia to amend the decision according to which that right or fundamental freedom is violated. In the repetition of the procedure domestic courts are obligated to respect the legal views expressed in the final judgment of the ECtHR according to which a violation of a human right and fundamental freedom is determined.[85]

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 principle, the court may order the defendant to perform a specific obligation to act only if it is due before the closing of the main hearing.[86] As an exception, the court may obligate the defendant to certain performance which has not become due before the closing of the main hearing in cases when the court satisfies the claim regarding maintenance.[87] This also applies in cases when the court obligates the defendant regarding compensation for future intangible damage if it is certain that it will last in the future.[88]

The final decision on the maintenance obligation shall remain in force until it is modified by a new decision (on the amount of the maintenance obligation). If there is a change in any of the circumstances that were substantial for the determining the amount of the maintenance obligation, as well as the amount of such obligation, after completion of the proceedings in which the original amount of maintenance was determined, the party may request the maintenance amount to be amended and adjusted to the new situation. This could be accomplished by filling a new action. In the new litigation it will be considered whether there is a basis for amending the amount of maintenance.

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?

The temporal boundaries of the finality of a judgment refer to the development of the disputed legal relationship until the moment when the parties had the opportunity to present facts and submit evidence in the litigation regarding that legal relationship. According to the Civil Procedure Act, that moment is the preparatory hearing, and in certain cases, as an exception to that rule, the moment of conclusion of the main hearing is considered as the final moment that falls within the temporal boundaries of *res judicata*.[89] The temporal boundaries

[85] Article 400 of Civil Procedure Act.
[86] Article 312, paragraph 1 of Civil Procedure Act.
[87] Article 312, paragraph 2 of Civil Procedure Act.
[88] Article 192 of Law on Obligations.
[89] Article 271, paragraph 2 and Article 284 of Civil Procedure Act.

of *res judicata* refers to the facts that were determined until these moments in the course of litigation. The facts that occurred later on and which were not presented in the proceeding are not embraced within the temporal boundaries of *res judicata.*

According to Macedonian law there is no possibility of new facts that occur after the last session of the main hearing and are beneficial to the defendant in civil procedure, i.e. the debtor in enforcement procedure to be invoked in enforcement proceedings with a legal remedy.

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?

During the civil proceedings, if the defendant has its own claim that can be set-off with the one claimed by the claimant, he has several possibilities how to act in the pending litigation.

Firstly, he can assert an objection for set-off, as a particular objection that the defendant may raise during the litigation. As already explained in 3.1.10, the objection for set-off is defined as procedural action of the defendant where he claims that he/she also has a compensable but still not set-off claim against the claimant, requesting for the court to determine the existence of such claims and to set them off with a decision. The second possibility is for the defendant to file a counterclaim for set-off as an independent action by the defendant against the claimant in an already pending litigation, by which the defendant in the same proceedings files its own claim against the claimant.

The difference between the objection for set-off and the set-off counterclaim lies in whether the defendant, if his claim has a greater value than the claim of the claimant, would have the possibility to ask for fulfilment of his/her claim on the basis of the rendered decision. If the defendant asserted his claim in a form of objection for set-off, the court cannot order the claimant to pay the difference, due to the fact that the defendants' claim is not asserted as a set-off counterclaim, but as an objection. On the other hand, if a counterclaim for set-off is filed; the court can obligate the claimant to fulfil the claim of the defendant over the amount exceeding his claim.

According to the Civil Procedure Act, the objection for set-off can be filed only during the first-instance proceedings, from the moment of *lis pendens* until the conclusion of the main hearing. The objection for set-off cannot be filed in appeal if it was not previously asserted during the first instance proceedings.[90]

On the other hand, the defendant may file a counterclaim for set-off no later than the first session of the main hearing. Until the conclusion of the main hearing, a counterclaim may be filed only with the consent of the claimant. Without claimant's consent, a counterclaim may be filed only when the court until the conclusion of the main hearing allowed modification of the principal claim even though the defendant objected.[91]

The set-off of a judicial claim cannot be invoked by the debtor in enforcement proceedings.

[90] *Arg. ex*. Article 341 paragraph 2 of Civil Procedure Act.
[91] Article 179 of Civil Procedure Act.

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?

The Civil Procedure Act makes clear distinction between the moment of commencement of civil procedure and commencement of litigation regarding a particular dispute. While a civil procedure begins with the filing of an action to the court (Article 175 of Civil Procedure Act), a litigation begins with the service of the action to the defendant (Article 184, paragraph 1 of Civil Procedure Act).

By filing an action to the court a bilateral procedural relationship between the claimant and the court is established, and by service of the action to the defendant the procedural relationship is settled as a tripartite relationship between the claimant, the court and the defendant. From that moment, the litigation is pending between the parties (*lis pendet*).

While the litigation is pending, a new litigation between the same parties may not be initiated regarding the same claim. If such litigation is initiated, the court shall reject the action. The court shall *ex officio*, in the course of the entire proceedings duly observe whether another litigation is pending between the same parties regarding the same claim.[92]

The double *lis pendens* is prohibited in cases when there is an identity of the parties and also an identity of the claim.

It is considered that an identity of the parties exists when same persons appear as parties in both litigations. It is irrelevant whether they have the same or different procedural role. The identity of the parties also exists when the new litigation is initiated by universal or singular successors of the parties from the earlier initiated litigation.

The identity of the claim is considered to exists when substantially identical claims are laid in both litigations, or when the claims are substantially contradictory, i.e. mutually incompatible because the merits of one claim excludes the possibility of the other claim to be founded.[93]

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.

Civil Procedure Act explicitly states that in the course of litigation, a new litigation between the same parties may not be initiated in regard to the same claim, and if such litigation is initiated, the court shall reject the claim. During the course of the entire proceedings, the court shall duly observe whether another litigation is pending between the same parties regarding the same claim.[94] As it can be noticed, the Civil Procedure Act,

[92] Article 184, paragraph 3 and 4 of Civil Procedure Act.
[93] Janevski, Zoroska Kamilovska, supra n. 27, p. 399-400.
[94] Article 184, paragraphs 3 and 4 of Civil Procedure Act.

regarding the identity of the claims operates with the notion of "same claim" ("*исто барање*") between "same parties" ("*исти странки*").

The identity of the claims is considered to exist when substantially identical claims are laid in both litigations. The identity of claims exists if both claims are founded on the same basis and are same in content, meaning there are identical facts as a ground of the claim (same cause of action) and identical requests in both actions. Also, the identity of claims is considered to exist when the claims are substantially contradictory, i.e. mutually incompatible because the merits of one claim excludes the possibility of the other claim to be justified.[95]

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)?

Macedonian legal order is familiar with the possibility of filing negative declaratory action in civil procedure. According to the Civil Procedure Act, the claimant may request with a declaratory action for the court to declare an existence or non-existence of a certain right or legal relationship or the authenticity or lack of authenticity of a certain document.[96] Regarding the negative declaratory action, declaration of the non-existence of the right or legal relationship or the lack of authenticity of a document is sought.

A declaratory action is permitted only if the claimant has a legal interest in filing such action. It is considered that the claimant has a legal interest when there is some uncertainty regarding the existence of certain right or legal relationship, which imperils the legal position of the claimant. This uncertainty justifies the engagement of the court in order to ensure the legal certainty and prevent future possible breaches of subjective rights.[97]

The declaratory action may be filed when it is stipulated with particular regulations, when the claimant has a legal interest for the court to declare the existence or non-existence of a certain right or legal relationship or the authenticity or lack of authenticity of a certain document before the maturity of the claim to act from the same relationship, or when the claimant has some other legal interest for filing such action.[98]

It is considered that the legal interest for filing a declaratory action exists if this type of lawsuit is the most suitable mode of legal protection. If the goals of the legal protection can be achieved through different type of a lawsuit, such as contradictory or constitutive, the legal interest for filing a declaratory action does not exist. Therefore, if the claimant files a declaratory action in such cases, the court shall reject the action.

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?

Regarding the identity of parties see answer under question 9.1.1

[95] Janevski, Zoroska Kamilovska, supra n. 27, p. 399-400.
[96] Article 177, paragraph 1 of Civil Procedure Act.
[97] Janevski, Zoroska Kamilovska, supra n. 27, p. 378.
[98] Article 177, paragraph 2 of Civil Procedure Act.

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

Regarding the concept of "same end in view" see answer under question 9.1.2.

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 Civil Procedure Act operates with the notion of joining litigations in cases there are related actions. When several litigations are pending before the same court, or where the same person is an opponent to different claimants or different defendants in such cases the court may decide to join all litigations for a joint hearing.

The purpose of the joinder is to provide for a procedural economy, a cost reduction and speeding up the hearing regarding the particular claims. This is mainly applicable in situations where the litigations are related over same or similar factual situation. The joinder of proceedings for the purpose of joint discussion is done with a decree of the judicial council. Since this is a decision regarding the managing of the procedure, the court is not bound by it so in the further course of the proceedings the court may separate the joined litigations for a separate hearing. For all joined litigations the court may render a joint judgment.[99]

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

No.

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

No.

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

The reasons for staying of the proceedings are determined by law. Civil Procedure Act makes distinction between staying of the proceedings *ex lege* or upon a court decision depending on the reason in every particular case.

The procedure stays *ex lege* if:

- the party dies;
- the party loses the procedural capacity and has no representative in the procedure;
- if the legal representative of the party dies or he/she loses its authorization for representation and the party has no representative in the procedure;

[99] Article 299 of Civil Procedure Act.

- the party that is a legal entity cease to exist, i.e. when a competent body ban the operating of the legal entity with a final decision;
- the legal consequences of bankruptcy procedure occurred;
- both parties ask for staying of the procedure due to solving the dispute through mediation or in other way;
- due to war or other reasons when the functioning of the court stops; and
- it is determined by another law.[100]

The procedure stays upon court decision in the following situations;

- when the court decided not to render decision upon previous legal issue; and
- when the party is located in a flooded area or area hit by other similar natural disaster and is cut off from the court.

In addition, the court may stay the proceedings when:

- a decision on the claim depends on whether an offence has been committed or a crime which is prosecuted *ex officio*, who the perpetrator is and whether he/she is responsible, and especially in case of suspicion that the witness or the expert witness gave a false statement or that the document that was used as evidence is false; and
- a motion for restitution in previous stage is filed, until the decision upon that motion becomes final.[101]

Part 10: Court settlements

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

A court settlement (*res iudicialiter transacta*) is an agreement by which the parties regulate their legal relations which they can freely dispose of, concluded in written form before a competent court, in or out of litigation, which has the capacity of a final judgment. If the court settlement determines an obligation, then it has the capacity of an enforcement title.[102]

A court settlement shall be considered valid if:

–it is concluded before a competent court;

–the court is properly composed;

–is concluded by a competent parties;

–a legal interest for its conclusion exists;

–the subject matter and content of the court settlement are permitted; and

[100] Article 200 of Civil Procedure Act.
[101] Article 201 and Article 112, paragraph 1 of Civil Procedure Act.
[102] Janevski, Zoroska Kamilovska, supra n. 27, p. 349.

–it is concluded in a form prescribed by law.

The parties may conclude a settlement regarding the subject matter of the dispute during the entire course of the proceedings. The settlement may also be concluded before filing an action. The settlement may concern the overall claim or a part of it. A settlement can be concluded only for claims that parties can freely dispose of.[103]

10.1.1 Describe the necessary elements a court settlement must contain.

The court settlement is valid only if it is concluded in a form prescribed by law. If parties reach an agreement regarding regulation of some of their civil law relations, the court will record it in the minutes, which is then signed by both the court and the parties and thus a court settlement is considered as concluded. The court settlement must contain data regarding the court before which it was concluded, data regarding parties, the agreement of the parties, the place and date when it was concluded and signatures of the judge and the parties. The Civil Procedure Act expressly states that the court settlement is considered concluded when the parties sign the minutes after having previously read it.[104]

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

In order to be considered as valid and consequently to have the force of an enforceable document, the court settlement must be concluded in the form and in compliance with the requirements of procedural law. Among other prerequisites described in answer under 10.1., the minutes recording the agreement that is subject matter of the court settlement must be signed by both of the parties in order to be considered as concluded.

10.1.3 How are the parties identified?

The Civil Procedure Act does not explicitly specify the manner how the parties should be identified in the procedure for concluding a court settlement, so the general provisions regarding identification of parties in civil procedure are being applied (provisions that regulate the content of a filing). According to Article 98 of Civil Procedure Act the filings should contain: name and surname of the parties, supported by evidence for personal identification, residence of the parties, data on company and headquarters for legal entities as parties, supported by evidence from the relevant register and data on parties' legal representative if they have one. The party in the filing is also obligated to state his/her unique Personal Identification Number (so-called "EMBG" for natural persons, and Unique Registration Number of the Subject of Registration (so-called "EMBS") for legal entities.

[103] In that regard, parties cannot conclude a court settlement in matrimonial disputes, maternity or paternity disputes.
[104] Article 308, paragraph 2 of Civil Procedure Act.

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

As mentioned previously, a settlement can be concluded only for claims that parties can freely dispose of. Article 307, paragraph 4 of the Civil Procedure Act explicitly stipulates that the court settlement cannot be concluded regarding claims that parties cannot freely dispose of referring to Article 3, paragraph 3 of Civil Procedure Act which states that the court shall not allow disposals of parties which are in contravention to compulsory regulations, provisions from international treaties ratified in accordance with the Constitution and morality.

For example, parties cannot conclude a court settlement in matrimonial disputes, maternity or paternity disputes.

10.2 When does a court settlement become enforceable?

According to the Enforcement Act, a court settlement, respectively a settlement concluded in an administrative procedure shall be enforceable if the claim became due after the settlement has been concluded. The maturity of the claim settled with the court settlement indicates that the time period for voluntary fulfilment of the obligation that is determined in the minutes of the settlement has expired. In such case, the maturity of the claim shall be proven by the minutes of the settlement.

There are cases when the minutes of the settlement does not specify a time period for voluntary fulfilment of the obligation. In such cases, the time period for voluntary fulfilment of the obligation can be additionally determined by the parties with a certified document according to the law, which will prove that the claim became due. A maturity that cannot be proven in the previously explained manner, shall be proven with a final decision reached in a civil procedure which verifies the maturity of the claim.

On a basis of a settlement that became enforceable in one part, the enforcement shall be carried out only in that part.[105]

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.*

In enforcement proceedings, usually, as creditor and debtor are considered the persons named in the enforcement title as such. However, it would be contrary to the needs of legal transactions in general if the enforcement procedure insists on the unconditional identity of the persons who are named as creditors and debtors in the enforcement title and the persons who participate in the enforcement proceedings as such.

For example, it is possible for the person named as creditor or debtor in the enforcement title to die before the initiation of the enforcement procedure; for the creditor to cede his claim to a third party; the debtor's obligation may be assumed by a third party; or the legal entity as

[105] Article 15 of Enforcement Act.

creditor or a debtor to go through a process of merging or division, etc. In such cases, the law allows persons other than those named in the enforcement title to engage as parties in enforcement procedure if they can prove with a qualified document that they are successors of the creditor or the debtor.

According to the Enforcement Act, the enforcement shall also be carried out upon a motion from a person who is not specified as creditor in the enforcement title if he/she proves with a notarial act, a solemnized private document or other public document that the claim has been transferred to him/her or that it has passed on to him/her in some other way. If this is not possible, the transfer of the claim shall be proven with a final decision reached in civil procedure. This shall also apply accordingly to enforcement against a person who is not specified as a debtor in the enforcement title.[106]

As qualified document proving the legal succession can be considered a decision on inheritance, an agreement for assignment of claim, etc. The Enforcement Act explicitly states that a power of attorney or an authorization certified by a notary public requiring the claim of the creditor to be paid to another person shall not be considered as qualified document proving the legal succession.[107]

The succession cannot take place when it comes to strictly personal and non-transferable rights.

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

The court settlement produces certain procedural and substantive legal effect. The basic procedural effect of the court settlement is the completion of the civil procedure. Although the Civil Procedure Act does not explicitly state, the court settlement is considered as a mode of completing the procedure just like the final court decision. The court settlement has the same effect as a final judgement. With its conclusion, the subject matter of the court settlement becomes *res judicata*. If the court settlement determines an obligation, the minutes recording the court settlement has the quality of an enforceable title. The concluded court settlement produces certain effect on the substantive legal relations as well. It is considered as a new regulator of the legal relations of the parties: it can change or abolish existing legal relations or create new. In that sense, a court settlement is an act of a constitutive nature.

Principally, given the procedural effects of the court settlement, the legal relationship, once settled with a court settlement cannot be amended. But, if there is a later mutual agreement of the parties regarding certain issue settled in the court settlement, the court settlement can be amended. For example, with *pactum de non exequendo* which terminate the enforceability of the court settlement. For further detail see answer under question 10.5.

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

The Enforcement act does not prescribe when the enforceability of a certain title ceases. It is considered that all circumstances due to which enforcement over a certain enforcement title cannot be initiated lead to termination of the enforceability. For ex., revocation or

[106] Article 19, paragraphs 1 and 3 of Enforcement Act.
[107] Article 19, paragraph 2 of Enforcement Act.

limitation of the legal force of the enforcement title, revocation of the certificate of enforcement or *pactum de non exequendo* could lead to termination of enforceability.[108]

If the court settlement is annulled by a final court decision, it loses the capacity of enforceability so it cannot longer be a basis for initiation of enforcement proceedings in order for the claim determined by it to be fulfilled. Enforceability may also be terminated by an agreement of the parties concluded in a form of a public document or a legally certified document by which the creditor obliges that he shall not initiate enforcement procedure permanently or for a certain period of time.

10.6 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.

In order to be valid, the court settlement has to fulfil certain procedural and substantial prerequisites. The Civil Procedure Act does not explicitly regulate the issue regarding the refutation of the court settlement: whether it can be refuted, by what means and on what grounds. Notwithstanding that the law does not contain special provisions in relation to rebuttal of the court settlement, in practice the court settlement can be refuted with an action for annulment, which is considered as a specific extraordinary legal remedy. The grounds for annulment of a court settlement mainly refer to defect of consent: if the settlement is concluded under threat, deception and misapprehension. A court settlement can be challenged if it refers to a claim that the parties cannot freely dispose of as well. But also, it can be challenged for other procedural reasons, for ex. if it was concluded before a judge or lay judge who by the law must have been recused or who was recused by a decree or if there were defects in the ability of the parties or their representation.

For recourses available against a notarial act see answer under question 11.8 and 11.15.

[108] Janevski, Zoroska Kamilovska, supra n. 11, p. 52.

Part 11: Enforceable notarial acts

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

The notary service in the Republic of North Macedonia is organised as an autonomous, independent public service performing public authority on the basis of the law at the request of citizens, state authorities, legal persons, and other interested parties. The notary public performs notarial activities freely, independently, autonomously, professionally and impartially in line with the Constitution, law, ratified international agreements and other regulations and general acts based on the law.[109]

The scope of functions and activities that are in the competence of the notary public service is generally regulated by the Notary Public Act, as well as by other laws.

According to the Notary Public Act, the notary service includes drawing up and issuing public documents for legal affairs in the form of notarial deed, statements and certificates on facts on which basis rights or obligations are established; rendering decisions in the procedure for issuing notarial payment orders; certification of private documents (solemnization); issuing of certificates; certification of signature and handwriting, transcript and translation; safekeeping of documents, money and valuables for their transfer to other persons and bodies; as well as performing entrusted activities determined by law.[110] Regarding the latter one, according to the Law on Non Contentious Civil Procedure, the notaries carry out the inheritance proceedings as trustees of the court. They can perform service of process in civil procedure as an entrusted activity by the court as well.[111] Notaries can also perform certain activities in legal matters of voluntary pledge and fiduciary security.[112] Notaries have certain competencies according to the Company Law as well. Although regulated by a special law, the matters in which the notary public acts in accordance with the Company Law, by their character and legal nature, fall within the core competencies of the notary public service regulated by the Notary Public Act – drawing up notarial acts regarding the status changes of the companies (acquisition, merger and division of the companies).[113]

Given the scope of activities which according to the positive regulations are in the competence of the notary public service, it can be noted that most of its competencies are result of the trend of dejudicialization primarily in the field of the non-contentious civil jurisdiction.

[109] Article 2, paragraph 2 and Article 3, paragraph 3 of Notary Public Act.
[110] Article 3, paragraph 2 of Notary Public Act.
[111] Article 129 of Civil Procedure Act.
[112] This competence of the notary public service is regulated with the Law on Contractual Pledge and the Law on Security of Claims.
[113] Article 520, paragraph 1 and Article 521 paragraph 1 of Companies Law.

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.*

Regarding the notarial documents, the Enforcement Act provides that notarial document shall be enforceable title if it has become enforceable according to special provision that regulates the enforceability of such document.[114]

Generally, notarial documents are public documents that the notary draw up within the scope of its competences and official activities determined by law. The Notary Public Act considers the following documents as notarial documents: document for legal affairs and statements drawn up by the notary in the form of notarial deed (notarial acts), notarial payment order, minutes for legal matters and other actions undertaken by the notary or undertaken in his presence (notarial minutes), certificates of facts established by the notary by direct observation or with the help of documents (notarial certificates) and certified (solemnized) private documents.[115]

In cases determined by Notary Public Act, notarial acts, certified (solemnized) private documents, notarial payment orders and decisions rendered in inheritance procedure as entrusted matter by the court have the force of an enforcement title.[116]

The Notary Public Act gives definition of what is considered as notary public enforcement title:

"*Нотарската исправа е извршна исправа, ако во неа е утврдена определена обврска за чинење за која странките можат да се договорат и ако содржи изјава на обврзникот за тоа дека врз основа на таа исправа, може заради остварување на чинењето по доспеаноста на обврската непосредно да се спроведе присилно извршување*"[117]

"*A notary public document is an enforcement title if it determines a certain obligation to act that the parties can agree on and if it contains a statement of the obligor that based on that document a forcible execution could be carried out directly in order to fulfil the obligation after it becomes due*"

On the basis of a notarial document which contains an obligation for establishing, transfer, restriction or termination of certain real rights, an entry in public book can be made if the debtor has explicitly agreed on that in the notarial document. On the basis of a notarial document according to which a pledge has been recorded in a public book, enforcement can be directly requested on the subject of the pledge for collection of the secured claim after the obligation becomes due, if the debtor has explicitly agreed on that in the notarial document.[118]

[114] Article 16 of Enforcement Act.
[115] Article 4, paragraph 1 of Notary Public Act.
[116] Article 4, paragraph 3 of Notary Public Act.
[117] Article 53, paragraph 1 of Notary Public Act.
[118] Article 53, paragraph 2 and 3 of Notary Public Act.

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'.*

In order to be considered as an enforcement title, according to Macedonian law, the notarial document must contain an enforceability clause – a statement of the obligor that based on that document a forcible execution could be carried out directly.

For further details, see the answer under question 11.2.

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?

Example of an enforcement clause:

„Продавачот под материјална и кривична одговорност изрично изјавува дека е согласен да доколку не го предаде недвижниот имот, предмет на овој договор на Купувачот во непосредно владение испразнет од ствари и луѓе најдоцна до 15.09.2009 година, Купувачот има право да спроведе ***непосредно присилно извршување*** *пред надлежниот орган Извршител согласно Законот за извршување и други важечки прописи, со испразнување на недвижниот имот, предмет на овој договор од ствари и луѓе и предавање на владението непосредно на Купувачот"*

"The seller under material and criminal responsibility explicitly states that he agrees that if he does not hand over the real estate, subject to this agreement to the Buyer in immediate possession vacated of objects and persons no later than 15.09.2009, the Buyer has the right to carry out ***direct enforcement*** *before a competent body Enforcement Agent in accordance with the Enforcement Act and other valid regulations, by evicting the real estate, subject of this contract, of objects and persons and handing over the possession directly to the Buyer"*

Regarding the question whether there is a difference in the enforcement clause if the notarial document refers to a monetary or non-monetary claim, the Notary Public Act does not specify any in regard to the drafting of the enforcement clause. Regardless of the nature of the claim, it is essential that the clause contains the statement of the obligor that he agrees upon a direct enforcement.

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

Obligor's consent to direct enforceability must be stated in a particular article (clause) of the notarial document.

For further details, see the answer under question 11.2 and 11.3.

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 statement of the obligor that he agrees upon direct enforcement cannot be of a general nature, since the law explicitly states that the enforcement clause must contain a consent of the obligor that based on the notarial document a direct enforcement could be carried out in order to fulfil= certain obligation to act, subject to a specific contract or legal deed drawn up in a form of notarial document after it becomes due.[119]

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

According to the Notary Public Act, the notarial act should contain:

- data on the day, month and year, and place when the act was drawn up and also the hour when the act was drawn up when it is stipulated by law or at participant's request;
- data (name, surname and official seat and area) for the notary public who drawn up the act;
- data (name, surname, place and date of birth, place of residence or stay, unique identification number, i.e. other identification number) for the participants. If one of the participants has a legal representative, then the same data should be entered for him/her, and the power of attorney should be certified, and attached to the original of the notarial act in original or certified transcript;
- a statement on the manner in which the notary public verified the identity of the participants;
- detailed description of the subject of the act. When the subject of the act is real estate, the cadastral data for the real estate are stated. If the real estate is located in a cadastral municipality for which there is no established real estate cadastre, nor a particular registration of the real estate rights is performed, and the property is not registered in the land cadastre, data from the documents for the legal basis on which the right to real estate is acquired are provided;
- attachments to the original of the notarial act in original or in certified transcript. A document from which the notary public determines relevant facts for legal draw up of the act is considered an attachment to the act;
- a note that the notarial act and the attachments were read to the participants or it was acted in accordance with the provisions of this Law. The reading of the attachments may not be performed if it is explicitly requested by all parties, and only in the case when they know how to read and write, and this will be stated in the act itself;
- marking the number of sheets and pages;

[119] Arg. ex. Article 53 paragraph 1 of Notary Public Act.

- signature of all participants, and at the end signature and seal of the notary public. If any of the participants in the notarial deed does not know or cannot sign, the reasons should be stated, and the notary public should note that, and
- data on the hour of signing the will.[120]

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

The notary public will determine the identity of the participant on the basis of a valid personal card (ID card) or passport. If this is not possible, or if the notary public suspects his/her identity, then the identity will be witnessed by two witnesses who meet the legal requirement to be witnesses[121]. The witnesses must be identified with a valid personal card (ID card) or passport and to declare before the notary public that they know the participant personally.

In the notarial document, the notary public shall state how he/she determined the identity of the participant. For the purposes of identifying the participants, the following personal information must be stated in the notarial document: the name, surname, date and place of birth, residence, unique identification number, i.e. other identification number for the participants, date and number of the document used to determine the identity and the body that issued the document. If the participant is a legal person, its subjectivity shall be determined on the basis of an insight in the competent register on the day of drawing up the notarial document or with an excerpt issued by the competent register, for which the notary public is obliged to have attached evidence in the case file.[122]

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

The notarial document that is considered to be an enforcement title does not contain a particular threat of enforcement. It only contains the enforcement clause where the obligor expressly states that he/she agrees on direct enforcement in lack of voluntary fulfilment of the obligation that is subject of the notarial act.

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

Before drawing up the notarial act, the notary is obliged to examine whether the participants are capable and authorized to undertake the particular legal matters, to explain the purpose, to teach them about the legal consequences and to be convinced in their true and serious will. The notary public, based on the statements of the participants, shall draw up the notarial act in fully, clearly and specifically manner, then read it to the participants and with

[120] Article 65 of Notary Public Act.
[121] Witnesses of identity must be persons who know the participant personally, and whose identity the notary public will determine on the basis of a valid personal card (ID card) or passport. Article 58 paragraph 1 of Notary Public Act.
[122] Article 57 of Notary Public Act.

direct questions shall be convinced whether the content of the notarial act corresponds to the will of the participants.[123] The performance of all these actions by the notary is stated in the notarial act as its obligatory part.

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

Although is not explicitly stated in the law, given the fact that according to Notary Public Act the notary public is obliged to warn the parties regarding the legal consequences of the undertaken legal actions and the drawing up of the notarial act, the notary is obliged to explicitly warn the parties about the direct enforceability of the act if the notarial act contains an enforceable clause.

For further details, see the answer under question 11.6 and 11.7

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?

The notarial act shall be considered drawn up after it has been signed by all participants, lawyers as legal representatives, parties and the notary public.[124]

According to the provisions regarding the drawing up of notarial documents in general, there is an explicit provision on signing a notarial document. It stipulates that a notary public is obliged to sign the notarial document at the end of the document instantly after its drawing up. In addition to his/her signature, he will put his/her official seal. At the end of the original of the notarial document, above the signature of the notary public, all participants who participated in the drawing up of the notarial document sign the notarial document by putting their signature and their name and surname in handwriting. If the notarial document consists of several pages, the notary public and the participants sign or initial every page of the notarial document.[125]

The notarial act shall be considered null and void and shall not be considered as public document if it lacks signatures of all participants and at the end the signature and seal of the notary public.[126]

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

The Notary Public Act explicitly states the situations when the notarial act shall be considered null and void and shall not be considered as public document.

According to Article 66, the notarial act is null and void if: a) it is drawn up by a notary public who is not registered in the Directory of Notaries Public at the Notary Public Chamber; b) it was drawn up by a notary public whose function terminated or has been dismissed; c) it

[123] Article 54 paragraph 1 and 2 of Notary Public Act.
[124] Article 54 paragraph 4 of Notary Public Act.
[125] Article 40 paragraph 1 and 2 of Notary Public Act.
[126] Article 66 of Notary Public Act.

was drawn up outside the official territory of the notary public; d) provisions regarding the manner of writing notarial document were not respected; e) provision for illiterate, deaf and dumb participants were not respected; f) provisions regarding the content of the notarial act were not respected, particularly those related to the data for the notary public who drawn up the act, the attachments to the original of the notarial act and those regarding the signing of the notarial act; and g) it was drawn up by a notary public who is temporarily removed from the notary public service.

Upon participant's claim, the court shall assess the significance of the breach committed during the drawing up of the notarial act, in case it is missing: a) the date of drawing up of the notarial act and the seat of the notary public who draw up the act; b) when the act was not read to the participants and c) when provisions regarding the content of the notarial act were not respected, particularly those related to the data on the day, month and year, and place when the act was drawn up; the data for the participants; the description of the subject of the notarial act; the marking of the number of sheets and pages and finally, the data on the hour of signing the will.

The party that deems that the notarial act is null and void may file an action to determine the invalidity of the notarial document before a competent court.

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.*

Generally, the notarial documents may cover a very broad range of legal deeds arising out of legal relations where the agreed obligations can become directly enforceable such as contractual obligations concerning loan, lease, contractual pledge (mortgage), obligation for establishing, transfer, restriction or termination of property and other real rights.

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?

If the notarial document determines a certain obligation to act and if that obligation depends on a condition or a time period that is not specified, in order the notarial document to be enforceable it is necessary for the creditor to prove that the condition or the time period has occurred. The creditor must approve those facts with a public document or with a statement certified by a notary public.

The notary who drew up the notarial act or has certified (solemnized) the private document shall put a certificate of enforceability of the notarial document, upon written request of the creditor, along with his statement certified by a notary public where he/she confirms under full moral, material and criminal responsibility, that the claim or a part of it

has matured (is due). The notary puts the certificate of enforceability on the basis of a special certificate for complete or partial enforceability of the notarial act.[127]

In a case of a dispute for fulfilment of the condition or occurrence of the time period regarding the enforceability of the notarial document, the party can file a civil action before a competent court.

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?

Obligations arising from the legal deed that is drawn up by the notary public in a form of notarial enforceable document must be set out explicitly in the text of the notarial act. It cannot be contained in the attachments to the notarial document.

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?

Yes. It is possible for the parties to conclude a contract regarding certain legal relationship without engaging a notary public to draw up a notarial act or to certify (solemnize) the specific contract which is a private document at once. If the contract contains an obligation to act upon which the debtor agreed to be directly enforceable, the parties can address a notary public to certify (solemnize) the contract in order to obtain a quality of a public document and become an enforcement title if the conditions under the Notary Public Act regarding notarial acts are met.

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?

It is preferable for the notarial document to contain specification of the time period in which the obligation of the obligor should be fulfilled. For the possibility of direct enforcement of the notarial act if the time period is not specified see answer under question 11.10.

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?

No.

[127] Article 53 paragraph 4 and 5 of Notary Public Act.

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?

There is no possibility for the debtor to raise grounds against the claim contained in the notarial act during enforcement proceedings. The only legal remedy that can be used in enforcement procedure is the objection against irregularities in enforcement procedure which only controls the lawfulness and the regularity of the enforcement agents' activities – whether he acted in accordance with the law during enforcement and did he undertake enforcement actions as required by the law. The object of refutation of the objection against irregularities cannot be the claim itself that is contained in the notarial act.

Still, the Notary Public Act stipulates for the possibility for the court to postpone the enforcement in cases when it determines that during the draw up or the issuance of the notarial document the preconditions that had to be met for it to have the quality of a public document or to have the force of an enforcement title have not been respected.[128] In such cases, the object of refutation is the sole procedure before the notary public and not the claim itself.

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

According to the Notary Public Act, notarial document issued abroad shall have the same legal validity as it was issued under this Law, provided if there is reciprocity.[129]

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

Other authentic instrument under Macedonian law which is considered as enforcement title other than those explicitly stated in the Enforcement Act, is the debenture regulated with the Law on Debenture.

[128] Article 53 paragraph 8 of Notary Public Act.
[129] Article 5 of Notary Public Act.

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].