



MANUAL - ALBANIA

for legal practitioners dealing with cross-border enforcement of civil claims



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Manual – Albania

This Manual is intended to help practitioners (primarily authorities in the field of civil enforcement) facing a foreign enforcement title. It offers answers to the most pressing issues faced in cross-border enforcement proceedings in a step-by-step manner, starting with the visual inspection and identification of the elements of the enforcement title. However, the Manual should only be used as an assisting tool in an unofficial capacity and cannot replace the scrutiny of regular inspection. The materials for this Manual have been sourced from national reports and other deliverables obtained within the EU-En4s project.

Contents

- 1. Judgement 4
 - 1.1 Headlines that form part of the judgement 4
 - 1.2 Structural and substantive division/sequence of the Reasoning..... 5
 - 1.3 Textual identification of the elements comprising the judgement..... 5
 - 1.4 Short description of the elements of the judgement..... 6
 - 1.5 Graphical separation of the elements of the judgement..... 6
 - 1.6 Specification of time-period in which the judgement must be performed 7
 - 1.7 Identification of Parties 7
 - 1.8 Indication of the amount in dispute..... 7
 - 1.9 Indication of the underlying legal relationship 8
 - 1.10 Information contained in the operative part 9
 - 1.11 Existence of a threat of enforcement..... 9
 - 1.12 Final specification of debt 9
 - 1.13 Partial rejection of a claim..... 9
 - 1.14 Set-off of a claim 10
 - 1.15 References to the Reasoning found within the operative part..... 10
 - 1.16 Wording used to mandate performance..... 10
 - 1.17 Reciprocal claims 10
 - 1.18 Indication of interest (rates)..... 10
 - 1.19 Legal ramification for incomplete, undetermined, incomprehensible or inconsistent operative part 11
 - 1.20 Legal effects of the Reasoning of the judgement..... 12
 - 1.21 Obtaining the res judicata effect..... 12
 - 1.22 Res judicata of negative declaratory relief..... 13
 - 1.23 Suspensive periods barring the enforcement of a judgement..... 13
- 2. Court settlements..... 14
 - 2.1 Elements of a court settlement..... 14
 - 2.2 Formal requirements..... 17
 - 2.3 Identification of Parties 17
- 3. Notarial deeds 17
 - 3.1 Prerequisites for enforceability..... 18
 - 3.2 Special clause..... 18
 - 3.3 Consent..... 19

3.4 Structure 19

3.5 Personal information..... 20

3.6 Obligations contained in attachments 20

3.7 Conditional claims 20

1. Judgement

1.1 Headlines that form part of the judgement

The Albanian Civil Procedure Code (hereinafter - ACPC) does not explicitly set out the “headlines” of a judgement. However, Art 310 of ACPC states the structure of the judgement.

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

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

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

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

The introductory part is typically confined to the front page of the Judgement. It features a graphic of the Albanian coat of arms, Republic of Albania/Name of the court. It contains the reference number of the case (registering number) number and date of the judgement. Centered aligned is written “Judgement in the name of the Republic and the name of Court and the composition of the court by providing the name and surname of the Judge or judges if the judgement is rendered by three judges. The judgement continues with the day on which the main hearing has been completed, the name of the secretary that assisted the hearings; the name of the parties and their representatives; the subject-matter of the claim; the cause of action (legal basis on which the claim is based).

The court outlines the descriptive-reasoning part in capital letters by stating “OBSERVED”.

At the end of the reasoning part, is stated that “FOR THESE REASON” and followed by the number of the legal provisions on which the judgement is based.

The court outlines the operative part by stating in (usually) capital letters that it has “DECIDED”.

All of the above headlines are center aligned. None of them are numbered.

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

There are not any formal or informal guideline regarding the structure and form of judgement. However, apart from the general structure of the judgement, the Reasoning of the judgement is sometimes subdivided with the inclusion of internal headlines. In order to provide clarity and structure to the Reasoning, the court might choose to address specific issues within the context of its ruling. For example, although not binding and depending on the individual style of the judge, court may sub-divided the (i) facts and circumstances of the case, (ii) the legal basis applicable in the context of the case, (iii) the evaluation of the court.

These optional headlines are left-indented. They are not numbered or listed, however, the paragraphs are usually numbered with Arabic numbers.

1.2 Structural and substantive division/sequence of the Reasoning

There is no binding guideline for the formal structure into paragraphs. However, the judges follow an individualistic style. Generally, the reasoning part in Albanian judgements issued by courts of general jurisdiction is usually structured into paragraphs. Depending on the individualistic style of the judge these paragraphs are numbered with Arabic numerals in accordance with the following format (they are subdivided into decimal numbers like. 1.1; 2.1... etc.):

1.	_____
2.	_____
3.	_____

The numbering does not, in and of itself, connote any particular value or information. The use of paragraphs and their numbering should be considered a stylistic figure, employed to enhance the transparency of information. This does not mean, however, that the judgement does not follow a predetermined order regarding its substance.

Apart from the structure determined by Art. 310 of ACPC all other formalistic styles depend on the judge. Article 310 of ACPC provides that:

“The judgment must contain the introduction, the reasoning part and the ordering part.

I. In the introduction of the judgment must be mentioned: 1. the court which has adjudicate the case; 2. the court member and the secretary; 3. the time and place of the issuance of the judgment; 4. the parties, indicating their identity and their position as Claimant, defendant, intervenors as well as their representatives; 5. the name of the counsel, if he has participated; 6. the object of the action (*petitium*); 7. the final claims of the parties; 8. the opinion of the prosecutor if he has participated;

II. In the reasoning part must be mentioned: 1. the circumstances of the case, as they have been assessed during the hearing, and the conclusions drawn by the court; 2. the evidence and reasons on which the judgment is based; 3. the legal provisions on which the judgment is based. The court judgment for claims worth up to 150 000 ALL should contain an introduction and operative part, under paragraph 1 of this Article. If the parties, within three days of notification of this judgment, notify the court in writing that they will appeal the judgment, the court shall reason the judgment and notify the parties.

III. In the operative part, among others must be mentioned: 1. what has the court decided; 1/1. If the court imposes obligations for the parties, their specific content and that the decision is enforceable by Enforcement Officer. 2. who is in charge of the court expenses; 3. the right of appeal and the time limit for its submission.

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

1.3 Textual identification of the elements comprising the judgement

“the introduction of the judgement”: Hyrje

“the operating part”: Pjesa urdhëruese

“the reasoning of the judgement”: Pjesa përshkruese-arsyetuese

“legal instruction”: e drejta e ankimit

1.4 Short description of the elements of the judgement

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

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

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

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

The reasoning part of the judgment must mention:

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

The ordering/operative part of the judgment must mention:

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

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

- (i) Introduction part
- (ii) Operative part.

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

1.5 Graphical separation of the elements of the judgement

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

1.6 Specification of time-period in which the judgement must be performed

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

The notice of voluntarily enforcement is provided explicitly by articles 517-519 ACPC. At the commencement of the enforcement of a judgment, the Enforcement officer issues to the debtor a notice for voluntarily enforcement of the obligation contained within the enforcement order designating for this purpose a timeframe of: (i) five days when the judgment involves a salary or an order for maintenance and (ii) ten days for all other judgments.

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

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

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

1.7 Identification of Parties

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

1.8 Indication of the amount in dispute

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

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

The value of the claim related to the existence, validity or dissolution of a legal obligation relationship is determined on basis of that part of the ratio which is under dispute. If the lease contract of

immovable objects has terminated, the value is determined on the basis of the amount of the requested rent, but if there are contests on the continuation of the lease contract, the value is determined by adding up the lease payments for the contested period. On a division of property, the value is determined by the value of the requested part. (art. 66 ACPC)

In case of a claim for a periodic maintenance obligation, when the title is objected, the value is determined on the basis of the total amount which should be given over two years. In cases related to life rents, when the title is objected, the value is determined by the sum of the values for twenty years, whereas in case of temporary rents, the value is determined by the annual sums requested for up to ten years. (art. 67 ACPC)

When a sum of money or a movable object is requested, the value is determined on the basis of the indicated amount or, of the declared value by the Claimant. In the absence of the indication or declaration, it is accepted that the determination of the value is in the competence of the court. The defendant may object the value declared or assumed as above, but only at the beginning of his defence. (art. 68 ACPC)

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

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

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

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

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

1.9 Indication of the underlying legal relationship

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

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

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

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

1.10 Information contained in the operative part

The operative part must communicate:

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

1.11 Existence of a threat of enforcement

The operative part does not contain any threat of enforcement. It contains the information about the right of appeal and the time limit for submitting it (art. 310/III ACPC)

1.12 Final specification of debt

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

1.13 Partial rejection of a claim

When a claim is wholly dismissed, the operative part communicates the "dismissal of the claim" (*vendim per rrezim padie*). When a claim is partially dismissed the operative part communicates "the

partially acceptance of the claim" (*pranim i pjesshem i padise*) by specifying the claims which are accepted and "dismissal of the other parts of the claim".

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

'The court decides:

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

1.14 Set-off of a claim

In cases where the debtor invokes set-off, the final judgement may eventually decide, among other, acceptance of the claim and/or counterclaim, by specifying the amount of both claims and declaring the amount to be compensated.

Example: The court decides to uphold the claim therefore A should pay to B the amount of 100 LEK; The court decides to uphold the counterclaim, therefore B should pay to A the amount of 80 LEK; Eventually as a result of compensation, A must pay to B the amount of 20 LEK.

1.15 References to the Reasoning found within the operative part

The operative part does not contain element from or references to the reasoning part of the judgement.

1.16 Wording used to mandate performance

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

1.17 Reciprocal claims

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

1.18 Indication of interest (rates)

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

in the interest rates provided by the law, such as the legislation in force that regulates late payments in contractual and the commercial obligations.

When the enforcement title, for which an enforcement order is issued, is an act for granting bank credit or monetary obligations, the Court shall provide for the legal interest rates in accordance with the legislation in force that regulates late payments in contractual and the commercial obligations (art. 511/ç ACPC).

Example:

“The court decides:

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

1.19 Legal ramification for incomplete, undetermined, incomprehensible or inconsistent operative part

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

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

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

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

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

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

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

1.20 Legal effects of the Reasoning of the judgement

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

1.21 Obtaining the *res judicata* effect

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

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

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

On the other hand, against the judgment of the Appeal court (which, as explained above is considered to be an irreversible judgment) parties are free to exercise the right of appeal (recourse), which is an ordinary mean of appeal. Judgments of the Appeal court and those of first instance may be appealed through recourse to the High Court: a) for incorrect implementation of material or procedural law, of essential importance for the unification, certainty and/or development of case law; b) when the appealed judgment is different from the case law consolidated by the Civil Chamber or the unified case law of the Joint Chambers of the High Court; c) there are serious violations of procedural norms, resulting in the invalidity of the judgment or of the hearing's procedure. (art. 472 ACPC)

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

Moreover, referring to the Joint Chambers of the Albanian High Court (regardless the fact that it refers to a criminal case, the issue is the same), a judgment can be enforced without necessarily having the status of *res judicata*. The judgment of the Appeal Court is enforceable but does not constitute a *res*

judicata judgment. In other words, every judgment that is *res judicata* is always enforceable, but not the other way around, since not every enforceable judgment is *res judicata*.

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

1.22 Res judicata of negative declaratory relief

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

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

1.23 Suspensive periods barring the enforcement of a judgement

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

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

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

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

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

2. Court settlements

2.1 Elements of a court settlement

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

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

"No of Judgment 11-2012-5082-1665,

Date of registration: 08.05.2012

Date 18.06.2012

Judgment

The District Court of Durres (introduction part)

Judge: _____

Assisted by court recorder_____, today on 18.06.2012, after reviewing the civil case between:

Claimant: _____, fatherhood, motherhood, DOB, education, address, civil status, ID number.

Respondent: _____ fatherhood, motherhood, DOB, education, address, civil status, ID

Object (*Petitium*): Dissolution of marriage; Approval of agreement regarding the consequences after the dissolution of the marriage.

Legal Provisions: Article 125, 132, 146 Family Code

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

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

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

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

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

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

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

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

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

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

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

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

“Leaving the child ___ DOB___, for raising and educating to the Respondent ___.

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

Claimant is obliged to pay the alimony for the child ___ in the amount of 15,000 LEK per month.

Respondent ___ after the dissolution of the marriage takes the surname, he/she had before the marriage.”

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

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

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

“Leaving the child ___ DOB___, for raising and educating to the Respondent ___.

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

Claimant is obliged to pay the alimony for the child ____ in the amount of 15,000 LEK per month.

Respondent ____ after the dissolution of the marriage takes the surname, he/she had before the marriage.”

The court, after getting convinced that the will of each party is real and free, concludes that the agreement regulating to the consequences of the dissolution of the marriage must be approved, as the agreement sufficiently ensures the interest of the child and spouses and is also signed by the parties in the court recording.

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

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

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

THEREFORE

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

DECIDES (operative part)

1. Dissolution of the marriage between the spouses;
2. Approval of agreement dated 28.12.2012 through which the parties have agreed on the following terms:

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

Claimant has the right to meet his child ____ every Saturday from 10:00 to 16:00.

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

Claimant is obliged to pay the alimony for the child ____ in the amount of 15,000 LEK per month.

Respondent ____ after the dissolution of the marriage takes the surname, he/she had before the marriage.”

3. After the judgment will become irreversible, one copy of this judgment will be sent to the Civil Status Office of the Administrative Unit No. 3, Durres;

4. Parties are in charge of the expensive costs.

5. Against this judgment an appeal can be submitted to the Appeal Court of Durresi within 15 days, starting this time limit from the next day of the announcement of the Judgment.

It was announced in Durres on.....’

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

‘The court decides:

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

2. Approval of the Act-Agreement with no. Rep. 129 and no. Kol 58, dated 07.02.2017 of the notary Mrs. R. K, member of the Chamber of Notaries Tirana, for the resolution of the judicial conflict by agreement.

3. Act-Agreement with no. Rep 129 and no. Kol 58, dated 07.02.2017 of the notary Mrs. R.K, member of the Tirana Notary Chamber, for the resolution of the judicial conflict in accordance will be attached and becomes an integral part of this judgment.

4. This judgment, in its final form, constitutes an enforcement title.

5. Attached to this judgment is issued the enforcement order.

6. A special appeal is allowed against this judgment within 5 days in the Shkodra Court of Appeals, starting this deadline from the day after the announcement of this decision. For the third default parties, this deadline starts from the next day of notification of this judgment. It was announced today in Shkodra, on 07.02.2017.'

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

'The court decides:

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

2.2 Formal requirements

According to article 158/ç (3)(4)(5) ACPC:

When reconciliation is reached before starting the hearing, a record is held, which is signed by the parties. The judge approves the reconciliation by a judgment (court settlement).

In case of submission of an agreement obtained through reconciliation or mediation, the court decides to approve it, if the latter is not inconsistent with the law.

When the reconciliation is reached in the hearing, the terms of the agreement shall be reflected in the court record. The court shall give its approval judgment, which in any case it should not be against the law.

The structure of the court settlement is provided in the section 2.1 Elements of a court settlement

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

2.3 Identification of Parties

In the court settlement, the parties are identified as in the example, provided in the section 2.1 Elements of a court settlement

3. Notarial deeds

3.1 Prerequisites for enforceability

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

The competent court for issuing the enforcement order (in the case when the enforcement title is a notarial act) will be determined in accordance with article 49 of the ACPC, which provides that: 'Actions, requesting obligatory enforcement on objects, are brought in the court of the place where these objects are or the biggest part of their value is. Actions requesting obligatory enforcement on performance of or omission to perform a certain action are brought in the court of the place where such enforcement must be fulfilled.'

The examination of the request for issuing the enforcement order is conducted by the judge without the presence of the parties. The court issues the enforcement order based on the documents filed by the applicant.

The enforcement order contains: a) the data identifying the debtor and creditor; b) the origin of the obligation; c) the concrete obligation deriving from the enforcement title until the moment of issuance of the enforcement order; ç) when the enforcement title, for which an enforcement order is issued, is an act for granting bank credit or monetary obligations, the Court shall provide for the legal interest rates in accordance with the legislation in force that regulates late payments in contractual and the commercial obligations. (art. 511 ACPC)

3.2 Special clause

According to article 510(d) ACPC only (i) a notarial document containing monetary obligations as well as (ii) documents for the grant of bank and non-bank financial institutions loans can be enforcement titles.

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

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

According to the said Unified Judgment, 'a two-pronged legal action (contract), whether a bilateral contract, such as a contract of sales or a one-sided contract, such as a loan contract, cannot be an

enforcement title. For an act issued by a competent state body, or prepared and certified by a public servant, under the conditions explicitly provided for by law, to be an enforcement title, it must contain a recognized, precisely defined, and a payable obligation, which is not related to meeting certain deadlines and above all, unconditional from other circumstances or from other mutual obligations.

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

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

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

3.3 Consent

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

3.4 Structure

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

- a. the number of repertoire and collection, the electronic identification number of the act and the venue of drafting of the act;
- b. the day, month and year of drafting, the type of act, the time and the minute when the act was started and finished, when applicable;
- c. the addresses of all parties;
- d. the detailed description of the circumstances, the condition of the parties that sign the act and any other elements which occur in the presence of the notary;
- e. the name and surname of the notary and the location of the notary office;
- f. the name and the last name, the father's name, the date of birth and the residence of the parties, the name and the seat when it is the case of a legal person; the name, the fatherhood and the last name of their representatives and of any other person participating in the act, and the verification made by the notary regarding the identity of the parties, their civil status, their legal capacity and their capacity to act;
- g. the statements of the parties and the acts presented by them;

- h. the clear specification of the objects that compose the object of the act with all their qualities and distinguishing signs. When the items are immovable, they shall be identified by the location where they are situated and their exact boundaries;
- i. In the act shall be mentioned serious occurrences that may have been verified during its editing, when the parties require such thing;
- j. the documentation to be attached to the act and being an integral part of the latter;
- k. the fact that the notary read aloud every word and explained the act to the parties and their statements that they have understood and accepted it, as well as the fact of signing in the presence of the notary;
- l. the signature of the parties and of all the persons present in the notarial act, and the notary's signature and seal.

3.5 Personal information

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

3.6 Obligations contained in attachments

The obligation should be contained in the notarial act, which should be signed by the parties and notary.

3.7 Conditional claims

The information regarding the possibility of the conditional claim, contained in the notarial act, to be directly enforceable, is provided in the section 3.2 Special clause.