



Research Paper

Small Claims Procedure, Legal Framework, Comparative Perspective, and Judicial Practice

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Abstract

The justice reform undertaken in Albania in 2016 introduced significant amendments to the Code of Civil Procedure, including the establishment of the small claims procedure. This procedural mechanism was designed to ensure a faster, simpler, and more efficient adjudication of contractual disputes involving claims of limited monetary value. Initially, the procedure applied to claims not exceeding 150,000 ALL (Albanian lekë) while subsequent amendments introduced by Law no. 44/2021 extended its application to contractual disputes not exceeding twenty times the national minimum wage. Despite these legislative developments, the restriction on the right to appeal before the High Court has remained unchanged, continuing to apply only to disputes up to 150,000 All. This paper examines the legal framework governing small claims procedures in Albania, focusing on the legislative evolution, comparative legal perspectives, and judicial practice developed so far. Particular attention is devoted to the practical challenges arising from the implementation of this procedure, especially in cases requiring expert evidence and its compatibility with the principles of procedural economy and effective judicial protection. The study aims to identify the main legal and practical issues encountered in judicial practice and to assess the effectiveness of the current procedural framework in achieving the objectives of judicial efficiency and access to justice.

Keywords: Small claims procedure, Civil procedure, Judicial practice, Justice reform, contractual disputes

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I. INTRODUCTION

Small claims procedures have also been regulated at the supranational level through the legal framework of the European Union. In particular, the European Union adopted Regulation (EC) No. 861/2007 of the European Parliament and of the Council establishing the European Small Claims Procedure, with the objective of simplifying and accelerating the adjudication of low-value civil and commercial disputes, especially in cross-border case^[1].

The Regulation was later amended by Regulation (EU) 2015/2421, which further expanded the scope and effectiveness of the procedure by increasing the monetary threshold applicable to small claims, strengthening the use of electronic communication and distance-hearing technologies, and reducing procedural costs for litigating parties^[2]. As part of the justice reform undertaken in Albania in 2016, several important amendments were introduced to the Code of Civil Procedure, including the establishment of the small claims procedure^[3]. This new civil procedural mechanism was intended to provide a faster and simplified adjudication process for claims arising from contractual relationships between litigating parties, provided that the value of the claim does not exceed a legally prescribed threshold. Initially, the legislative amendments^[4] provided that the small claims procedure would apply to disputes with a value of up to 150,000 ALL (Albanian lekë)^[5]. These reforms were also accompanied by limitations on the right to appeal judicial decisions rendered in such cases. More specifically, the legislator provided that no recourse before the High Court would be permitted against appellate court decisions concerning claims with a value not exceeding 150,000 lekë, thereby restricting the parties' right to further appeal. Subsequently, amendments introduced by Law no. 44/2021 expanded the scope of the simplified procedure by providing that it would apply to contractual disputes not exceeding twenty times the national minimum wage. However, although the monetary threshold for the application of the procedure was

increased, the legislator did not correspondingly amend the restriction concerning the right of recourse before the High Court, which continues to remain limited to disputes up to 150,000 ALL.

The selection of this topic is closely related to the legal and practical issues identified through the analysis of judicial practice regarding the implementation of the small claims procedure. In particular, this study focuses on the difficulties encountered in determining whether simplified proceedings should apply in specific cases, especially where the taking of expert evidence becomes necessary. The paper seeks to analyze these procedural challenges and evaluate the extent to which the current legal framework effectively balances procedural efficiency with the guarantees of a fair trial.

II. CONTENT

2.1. Judicial Practice and Case Studies Examined During the Professional Internship

This section presents several judicial cases and procedural acts examined during the professional internship conducted at the Court of First Instance of General Jurisdiction of Tirana. The selected cases serve as practical examples reflecting the implementation of the small claims procedure in Albanian judicial practice. Particular attention is devoted to the procedural actions undertaken by the court, the application of the relevant provisions of the Code of Civil Procedure, and the practical issues encountered during the adjudication of contractual disputes of low monetary value. Through the analysis of these cases, the study aims to illustrate the practical functioning of the simplified procedure and its impact on procedural efficiency and access to justice.

The first case, registered under no. 16189 on 3 October 2023 before the Court of First Instance of General Jurisdiction of Tirana, concerned a contractual dispute between “D...” Ltd., acting as claimant, and R.P., a natural person acting as defendant. The object of the claim consisted in the fulfilment of a contractual obligation relating to the payment of internet service invoices in the amount of 300 euros^[6]. The case involved a lawsuit filed by a commercial company operating in the field of internet services, which alleged the non-payment of contractual obligations by its client, R.P. This judicial file was examined within the framework of the pre-professional internship conducted under the supervision of the mentor judge, who assigned the task of drafting the court decision concerning the communication of the statement of claim and the notification of the defendant regarding the submission of the statement of defence. In accordance with the instructions provided by the mentor judge, assistance was provided in drafting the decision on preliminary procedural actions dated 26 October 2023, through which the defendant was granted a fifteen-day time limit to submit the statement of defence^[7].

The second case, registered under no. 14508/5588 on 11 December 2019, and concluded by decision no. 3478 dated 15 September 2020 of the District Court of Tirana, concerned a dispute between “E.I.”, acting as claimant, and “E...” Ltd., acting as defendant. The claimant sought the obligation of the defendant to reimburse the amount of 124,231 Albanian lekë as a legal and contractual obligation arising from the payment of property transfer taxes and related bank commissions paid by the claimant. Specifically, the amount claimed consisted of 93,799 lekë regarding property no. 6/760-ND+2-S, cadastral zone 8260, 30,032 lekë regarding property no. 6/760-ND-G3, cadastral zone 8260, and bank commissions in the amount of 400 lekë, based on payment orders dated 5 December 2019. In addition, the claimant requested the reimbursement of court expenses in the amount of 3,000 lekë^[8]. This case was examined within the framework of the review of previous judicial decisions, where the dispute between the parties focused on two contracts concerning the transfer of ownership of immovable properties. The claimant, acting in the capacity of purchaser, sought the reimbursement of the aforementioned amount from the defendant, arguing that the obligation relating to the payment of the property transfer tax was contractually imposed upon the defendant under the property transfer agreements concluded between the parties.

The third case, registered under no. 16444/8191 on 25 October 2021 and concluded by decision no. 3460 dated 22 June 2022 of the District Court of Tirana, concerned a dispute between “O...” JSC, acting as claimant, and F.B., acting as defendant. The object of the claim was the obligation of the defendant to pay the amount of 21,403 Albanian lekë as an unpaid debt arising from mobile telephone services^[9]. This case was also examined within the framework of previous judicial decisions, where the dispute between the parties centered on a mobile telecommunications service contract. In this instance, the claimant, acting in the capacity of a mobile service provider, brought an action against its client seeking the fulfilment of an outstanding contractual obligation related to unpaid telephone service charges.

The fourth case, registered under no. 17407/8950/4936 on 2 December 2021 and concluded by decision no. 594 dated 15 February 2023 of the District Court of Tirana, concerned a dispute between “D...” Ltd., acting as claimant, and D.Sh.S.D., acting as defendant. The object of the claim consisted in the fulfilment of a contractual obligation relating to the payment of outstanding telephone service invoices in the total amount of 52,011 ALL Albanian lekë^[10]. This case was likewise examined within the framework of previous judicial decisions, although the final judgment was rendered during the current year. The dispute arose as a consequence of the defendant’s failure to fulfil the contractual obligation for payment of telephone services provided under

the service agreement concluded between the parties. The service provider company subsequently assigned its credit claim to the claimant, who, acting in the capacity of assignee, acquired active legal standing to initiate the present lawsuit.

The fifth case, registered under no. 2190 on 24 November 2020 and concluded by decision no. 3022 dated 16 June 2023 of the Court of First Instance of General Jurisdiction of Tirana, concerned a dispute between “T...” Ltd., acting as claimant, and E.P., acting as defendant. The object of the claim was the obligation of the defendant to pay an outstanding debt in the amount of 81,916 Albanian lekë owed to the creditor “T...” Ltd^[11]. This case concerned a dispute likewise arising from a telecommunications service contract, where the claimant, acting in the capacity of assignee, alleged that the defendant had failed to fulfil the contractual obligation relating to the services received under two separate contracts concluded for two telephone numbers. During the proceedings, the defendant challenged the authenticity of the signature appearing on the contractual documentation, alleging forgery. This circumstance led the court to render a decision partially accepting the claim.

2.2. Analysis of the Small Claims Procedure and the Problems Identified During Its Practical Implementation

The introduction of the small claims procedure into the Albanian civil procedural system constituted one of the principal innovations brought by the justice reform and the amendments to the Code of Civil Procedure. This procedure was designed to ensure a more efficient, expedited, and less costly resolution of contractual disputes involving claims of limited monetary value. Nevertheless, judicial practice has demonstrated that the practical implementation of this procedure has raised several interpretative and procedural difficulties, particularly in cases involving the administration of evidence. Based on the judicial cases examined during the professional internship and the analysis of court practice, this section aims to address the principal legal questions and practical issues arising from the application of the small claims procedure.

- Questions Raised

Taking into consideration the factual circumstances of the cases examined and observed, as well as the practical difficulties identified during judicial practice, the following issues have been considered necessary for analysis: *With reference to the provisions governing the adjudication of small claims, is this procedure applied rigorously and consistently in judicial practice? What are the principal difficulties encountered by courts in cases where the administration of expert evidence becomes necessary, and how have courts addressed such situations in practice?*

- Theoretical Background

According to doctrinal interpretations, the legislative amendments introduced in 2017 brought significant innovations to the Albanian procedural system, considering that Albanian legislation had previously not established a distinction between claims on the basis of monetary value, nor provided a specific procedure for the adjudication of such claims^[12]. The purpose behind the establishment of a simplified procedure for small claims was to facilitate access to justice for individuals seeking judicial protection of their rights. Through this special procedural mechanism, the legislator sought to ensure the effective implementation of the principle of access to court, since individuals might otherwise be discouraged from initiating judicial proceedings due to excessive costs and the relatively long duration of ordinary civil litigation^[13]. Legal doctrine has further elaborated the fundamental criteria required for the application of this procedure, which must be fulfilled cumulatively. First, the value of the object of the claim must not exceed 150,000 ALL (Albanian lekë)^[14] second, the obligation in dispute must arise from a contractual relationship. Furthermore, doctrine emphasizes that courts are required to apply only certain procedural provisions specifically provided for this type of adjudication. Nevertheless, in cases where the administration of expert or witness evidence becomes necessary, such evidence may also be administered in written form without affecting the simplified nature of the proceedings^[15]. Regarding the adjudication of small claims, the Albanian Code of Civil Procedure provides that the examination of the case should generally be conducted in writing, while the decision to hold a hearing with the presence of the parties is left to the discretion of the court, provided that the court considers such a hearing necessary. The summoning of the parties to a hearing must be reasoned and should constitute an exception to the general rule of written proceedings^[16].

2.3. The Court’s Approach in the Examined Judicial Practice: Analysis

During the examination of judicial practice before the Court of First Instance of General Jurisdiction of Tirana, several issues were identified both in relation to the procedural framework followed by the courts and with regard to the administration of expert evidence. More specifically, in the second, third, and fourth cases examined above^[17], it was observed that the courts failed to apply the special small claims procedure, despite the fact that the disputes clearly concerned claims falling within the category of small claims. From the examination of the judicial file related to decision no. 3478, dated 15 September 2020, the court, after issuing the preliminary

decisions concerning the communication of the statement of claim and the statement of defence, proceeded to issue an order scheduling a judicial hearing and duly notifying the litigating parties. The court further proceeded with the declaration of the defendant's absence and conducted the hearing in the presence of the claimant, including the stage of final submissions. With regard to the operative part of the decision, it appears that the court failed to apply Article 310/II of the Albanian Code of Civil Procedure, since the decision did not specify that the parties could request a reasoned judgment within three days, but instead proceeded according to the rules applicable to ordinary proceedings. From the examination of this case file, it remains unclear why the court failed to apply the special procedure, especially considering that the claimant itself had expressly requested the application of the simplified procedure in the statement of claim.

Moreover, the object of the dispute concerned a fixed monetary amount documented through payment orders, leading to the conclusion that the non-application of the special procedure lacked a justified legal basis^[18]. A similar procedural approach was identified in the following two cases concluded by final decisions no. 3460, dated 22 June 2022, and no. 594, dated 15 February 2023. From the examination of the court records and the course of proceedings, it appears that the courts followed the same procedural model. In both cases, after the completion of the preliminary phase concerning the communication of procedural acts between the parties, the courts proceeded with the issuance and notification of the order scheduling the judicial hearing, followed by the adjudication of the case in the absence of the defendants. Even in these cases, no objective circumstance was identified that could justify the non-application of the special small claims procedure^[19]. A different situation arose in the fifth case, corresponding to decision no. 3022, dated 16 June 2023, rendered by the Court of First Instance of General Jurisdiction of Tirana. In this case, the defendant challenged the authenticity of the signature appearing on the service contracts. After completing the phase concerning the communication of the statement of claim and the statement of defence, the court, during the hearing of 24 December 2021, following the hearing of the defendant, ordered the administration of expert evidence regarding the alleged falsification of the signature. The proceedings continued through preparatory hearings held on 1 March 2022 and 28 April 2022, during which the claimant submitted the original contracts, while the defendant provided both experimental and free signature specimens. The expert also took the required oath during the preparatory hearing.

During the preparatory hearing of 27 June 2022, the official communication of the Institute of Scientific Police concerning the completion of the expert examination report was administered, while the hearing was postponed until 27 September 2022 due to the defendant's allegation regarding the statutory limitation of the claim^[20]. The hearings of 27 September 2022 and 14 November 2022 were postponed due to the non-payment of the expert's remuneration and the notification concerning the claimant's inability to appear. Subsequent hearings were held on 19 December 2022, 3 March 2023, and 24 April 2023, during which the conclusions of the expert report were made available and formally presented by the expert. On 31 May 2023, the judicial hearing took place, during which the claimant provided clarifications regarding the tax invoices and the parties submitted their final conclusions. Finally, during the hearing of 16 June 2023, the court rendered the final decision, partially accepting the claim on the grounds that one of the signatures contained in the contracts did not belong to the defendant^[21]. As demonstrated above, in cases involving allegations concerning the falsification of documentary evidence, the court considered that the dispute should not be adjudicated under the special small claims procedure but rather according to ordinary proceedings. In the present case, the proceedings extended over eleven hearings until the final judgment was rendered^[22]. From a practical perspective, this procedural approach was influenced by the defendant's challenge to the authenticity of the contractual signature, where the administration of expert evidence was considered incompatible with the simplified procedure provided under Article 162/a of the Albanian Code of Civil Procedure^[23].

In this regard, it may be argued that the administration of expert evidence remained indispensable due to the technical and scientific expertise required, which falls outside the ordinary knowledge of the judge. Nevertheless, such evidentiary administration could arguably have been conducted while still preserving the principles and structure of the special small claims procedure. Although the legislator has not expressly provided that expert evidence may be administered through the special procedural rules governing small claims unlike the express provision concerning witness evidence under Article 236/a of the Albanian Code of Civil Procedure it may reasonably be considered that the presentation of the expert to the parties, the parties' possible objections concerning the expert, the submission of the expert conclusions, and the parties' observations regarding the findings of the expert examination could all be conducted in chambers without undermining the essential nature and objectives of the simplified procedure.

In this regard, it is considered that the administration of expert evidence remains indispensable due to the need for specialized technical and scientific knowledge that falls outside the expertise of the judge. However, this evidentiary activity could still be carried out in accordance with the principles and rules governing the special (simplified) procedure for small claims. Although the legislator has not expressly provided that the appointment and examination of an expert may be conducted under the special procedural framework applicable to small claims unlike the explicit provision regulating witness evidence under Article 236/a of the

Code of Civil Procedure it is nevertheless argued that key procedural steps such as the presentation of the expert to the parties, the raising of objections against the expert, the submission of expert conclusions, and the parties' submissions on the expert findings may be conducted in chambers by the court without affecting the essence of the simplified procedure. As also emphasized in legal doctrine^[24], the administration of expert evidence in chambers, as well as adjudication based primarily on documentary evidence in such cases, is both feasible and consistent with the nature of simplified proceedings. From my point of view, the application of the special procedure in these circumstances would ensure due process by safeguarding the principle of adversarial proceedings in written form, while simultaneously enabling the parties to obtain a final judicial decision within a shorter timeframe, thereby enhancing substantive access to justice.

In conclusion, reference should be made to a decision of the Court of Appeal of Vlora, which annulled a decision of the District Court of Vlora and remanded the case for retrial. The Court of Appeal held that the simplified small claims procedure could not be applied in proceedings concerning the invalidity of an enforcement title, even where the monetary value involved is low. According to the court, enforcement proceedings constitute a special legal regime which prevails over the general rules governing civil litigation. This position, in my view, remains debatable, as long as an enforcement title derives from a contractual relationship involving a small monetary value, the dispute concerning its invalidity essentially resembles a merits-based examination of the existence of the alleged obligation. Consequently, I consider that proceeding under the simplified procedure in such cases would not constitute a procedural violation, nor would it give rise to defects that would render the judicial process invalid under Article 467 of the Code of Civil Procedure. The Court of Appeal annulled the decision and remanded the case for retrial on the grounds of violations of points (ç), (d), and (e) of Article 467; however, in substance, the simplified procedure under Article 162/a of the Code of Civil Procedure ensures both adversarial proceedings and full knowledge of the parties regarding the process.

III. Conclusions

In conclusion, it is observed that the application of the simplified small claims procedure in the adjudication of low-value claims remains inconsistent and, in many instances, problematic in judicial practice. Courts do not appear to follow a uniform and coherent approach in the interpretation and application of the relevant procedural provisions, which undermines legal certainty and procedural predictability. Furthermore, it is evident that different judicial panels, often invoking the necessity of ensuring a fair trial and the full observance of due process guarantees, tend to refrain from applying the special simplified procedure. This cautious judicial approach, although understandable from the perspective of procedural safeguards, has in practice limited the effective implementation of a procedural mechanism that was originally designed to ensure speed, efficiency, and accessibility of justice. It is also observed that in cases where the administration of expert evidence becomes necessary, courts due to the absence of explicit and detailed legislative regulation frequently revert to ordinary civil proceedings. This tendency effectively neutralizes the advantages of the simplified procedure, as the involvement of expert evidence is relatively common in contractual disputes of small monetary value, particularly in telecommunications and service-related claims.

As a result, the lack of a clear procedural framework governing expert evidence within the small claims regime creates legal uncertainty and leads to procedural fragmentation. This situation ultimately affects the efficiency of the judiciary and weakens the practical effectiveness of the legislative reform introduced with the aim of accelerating civil justice. In this context, it is strongly recommended that the legislator undertakes targeted amendments to the Code of Civil Procedure by introducing a specific provision regulating the administration of expert evidence within the framework of the small claims procedure. Such a provision would ensure procedural completeness and eliminate interpretative ambiguities that currently lead to divergent judicial practices. Alternatively, and in the absence of immediate legislative intervention, it is suggested that courts develop a more flexible interpretative approach, applying by analogy the existing provisions governing simplified procedures particularly those similar to Article 236/a of the Code of Civil Procedure—to the administration of expert evidence. This would allow courts to preserve the simplified nature of proceedings while still ensuring procedural fairness. It is further recommended that judicial practice moves towards greater harmonization through the development of unifying jurisprudence or interpretative guidance, in order to ensure consistent application of the small claims procedure across different judicial panels and courts. Finally, strengthening procedural efficiency in this area would significantly enhance access to justice, reduce unnecessary delays, and ensure that low-value contractual disputes are resolved in a manner that is both legally sound and practically effective, fully aligning with the original objectives of the procedural reform.

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- [20]. The claim for the statute of limitations of the lawsuit should in fact have been raised at the time of filing the statement of defense, according to Article 158, paragraph 7 of the CPC.
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