

Features of the Special Civil Procedure for Small Value Disputes in Countries of the Balkan Region

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Abstract

Disputes of small value, as defined by the provisions of the Law on Civil Procedure (LCP), refer to those legal disputes where the claim pertains to a monetary amount that does not exceed 500 Euros. In addition to monetary claims, disputes of small value also include claims where the plaintiff does not seek money directly but states that a payment of no more than 500 Euros could satisfy their non-monetary claim. Moreover, disputes of small value also encompass cases where the subject of the claim is not money but rather the transfer of movable property, which, according to the plaintiff, has a value not exceeding 500 Euros. The LCP clearly outlines these criteria to ensure that such cases are processed efficiently and fairly, taking into account the relatively low stakes involved. By categorizing these disputes as small value, the LCP aims to simplify procedures and reduce the burden on the courts, ensuring quicker resolutions for the parties involved.

Keywords: Contested, procedure, legislation, small value disputes, special appeal and lawsuit.

Introduction

In relation to the provisions of this law, the disputes related to real estate property, labour relationship disputes and disputes due to obstruction of ownership are not considered small value disputes allowed only against the resolution with which the court process of the first instance ends. Other resolutions, against which a special appeal is allowed according to this law, can only be appealed through an appeal against the decision that ends the procedure, and these resolutions are not sent to the parties separately, but are announced in a court session and incorporated into the final decision (Procedure, 2008).

If the plaintiff amends the claim by enlarging it, thus exceeding the limit of 500 Euros, the initiated procedure will be continued and concluded according to the provisions for the general contested procedure, of this law. If the plaintiff reduces the claim to under 500 Euros before the main case review ends, the procedure will

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follow small claims rules. If the plaintiff fails to attend the first main hearing despite summons, it's deemed withdrawal unless the defendant requests to proceed without them. However, if both litigants are absent from the first session for the examination of the main case, instead of the regular summons, it will be considered that the plaintiff has withdrawn the lawsuit. The final decision in a small claims dispute can only be appealed only for of the essential violation of the provisions on the contested procedure and for the incorrect application of the substantive law (Procedure, 2008).

Literature Review

In jurisprudence, the contested procedure is said to be a way or method of action or progress that we follow when we carry out a duty. The procedure as a whole consists of the actions performed by the subjects of a trial in the civil case, which are called procedural actions. These actions are performed by three main subjects of the concrete judicial process: the plaintiff, the defendant and the court (Faik Brestovci I. M., 2017). The contested procedure is a general, regular procedure and a fundamental principle of protection of violated or endangered rights of civil law subjects, which is provided by the state judiciary. If the law that regulates civil legal matter does not foresee any issue related to the non-contested and enforcement procedure, the principles of the contested procedure are applied, while any of the principles of the non-contested procedure will be applied only if it is regulated by law. Here we should also mention the provisions of Article 1 of the Law on Contested Procedure (Procedure, 2008), according to which the procedural rules are determined by law, through which courts examine and settle civil justice disputes of natural and legal persons, unless otherwise provided for by a particular law. The LCP encompasses all rules guiding basic court decisions on disputes in personal, family, labor, and civil property matters between individuals and entities (Mustafë Musa, 2015).

In most cases, courts follow contested procedures when resolving disputes between two parties. A dispute arises when one person asserts a civil right against another who denies its existence or obligation to act in a certain manner (Faik Brestovci, 2006).

Disputes from legal-civil relations are related to the basic issue of which special duty the civil procedures have to fulfill. It depends on the objectives of the substantive law. In general, it can be said that the duty of civil procedure is the resolution of a civil dispute in a regulated process, which takes place at the state courts. The "discovery" of the procedure for implementing the legal order represents the greatest performance or achievement of the human mind. Consequently, the question arises, what is meant by legal-civil relations. The

answer to this point is of fundamental importance because other non-legal-civil relations are subject to other rules (Iset Morina, 2012).

Research Questions

- What are the specific procedural mechanisms implemented in Balkan countries to expedite the resolution of small-value disputes?
- How do the monetary thresholds for small-value disputes vary among Balkan countries, and what factors influence these variations?
- What are the key differences between the special civil procedure for small-value disputes and the general civil procedure in Balkan legal systems?
- How do Balkan countries ensure access to justice for litigants involved in small-value disputes, considering the simplified procedural requirements?

Methodology

This study employs a phenomenological approach and comparative analysis to investigate the features of the special civil procedure for small-value disputes across Balkan countries. In-depth interviews constitute a primary data collection method, targeting legal experts such as judges, lawyers, and scholars, as well as court personnel and litigants involved in small-value dispute cases. Focus group discussions supplement these interviews, facilitating a collective exploration of shared experiences and perceptions. Additionally, document analysis of legal texts, court documents, and policy papers provides contextual insights. The scientific methods used in this study are normative method, analytical method and comparative method. Overall, this qualitative methodology aims to provide a comprehensive understanding of the special civil procedure for small-value disputes in the Balkan region.

Results and Discussion

The contested procedure, as described by Faik Brestovci (Faik Brestovci I. M., 2017), is a fundamental principle in safeguarding the rights of civil law subjects within the state judiciary. It serves as a method for resolving disputes between parties, wherein one asserts a civil right against another who denies its existence or obligation, as highlighted by Faik Brestovci (Faik Brestovci, 2006). The Law on Contested Procedure (LCP) of Kosovo (Procedure, 2008), as outlined in the research, establishes the procedural framework through which courts examine and settle civil justice disputes between natural and legal persons. This legislative framework encompasses rules governing decisions on disputes in personal, family, labor, and civil property matters, as noted by Mustafë Musa (Mustafë Musa, 2015).

Iset Morina (Iset Morina, 2012) emphasizes that disputes arising from legal-civil relations underscore the core objective of civil procedures, which is the resolution of civil disputes through a regulated process conducted in state courts. The discovery and implementation of procedural rules represent significant achievements in the legal order, ensuring the fair and effective resolution of civil disputes.

The contested procedure involves procedural actions performed by the main subjects of the judicial process: the plaintiff, the defendant, and the court, as outlined by Faik Brestovci (Faik Brestovci I. M., 2017). These actions are integral to the progression and resolution of civil disputes within the legal framework provided by the contested procedure.

When civil legal matters do not foresee non-contested or enforcement procedures, the principles of the contested procedure are applied, as stated by Faik Brestovci (Faik Brestovci I. M., 2017). Conversely, non-contested procedural principles are applied only if specifically regulated by law, highlighting the primacy of the contested procedure in civil dispute resolution.

The duty of civil procedure, as asserted by Iset Morina (Iset Morina, 2012), is to resolve civil disputes in accordance with the objectives of substantive law. This underscores the importance of aligning procedural mechanisms with the underlying principles and goals of substantive legal frameworks governing civil relations.

The principles of the contested procedure

In the contested procedure (Uka, 2011), the term principle refers to the basic rules, which describe the activity carried out by the subjects of the process in order to achieve the legal protection of the subjective right or with the purpose of concluding that such claim is not grounded. The principles of this procedure determine the methods of action that are carried out during the examination of the legal issue and the decision taken in relation to it (Albert Zogaj, 2019).

Subjects of the contested procedure

In the contested procedure, two parties always appear: the plaintiff (actor) and the defendant (reus). Also, the court is presented as another procedural subject. The subject of the right (natural person or legal entity) acquires the status of the plaintiff party or the defendant party by the very fact of filing the lawsuit in court. The defendant becomes the subject of the law without his will (Faik Brestovci I. M., 2017).

The natural person acquires the ability to be a party from the moment of birth, while the legal person from the moment of registration in the relevant register

(Gojani, 2013). The natural person acquires procedural capacity (that is, the possibility to perform procedural actions in the trial) at the age of 18 (adulthood), while the minor who has not fully acquired the capacity to act, has procedural capacity within the limits in which the capacity to act is recognized. Procedural competence is the quality of the party to personally and validly perform procedural actions. A party under the age of eighteen (18) does not have procedural capacity, and on its behalf and on its account, its legal representative (parent or guardian) performs procedural actions. For the party that is a legal entity, procedural actions in the trial are performed by the natural person designated by its statute (Mustafë Musa, 2015).

Beginning of the contested procedure

The lawsuit is the first procedural action by which the contested procedure is put into action. The civil proceeding is set in motion with the filing of the lawsuit as an introductory (initial) procedural act, in which a certain request is emphasized, regardless of how the term on which the court must decide is understood (Hasani, 2019).

The lawsuit is handled in two aspects: in the material and formal aspect of the lawsuit. The lawsuit in material terms constitutes the request of the plaintiff that the court, with a decision of a certain content, compels the defendant to perform the prestation in his favor, or to ascertain that there is or is not a certain material-legal relationship, or to change a legal situation (Faik Brestovci, 2006). The lawsuit in formal terms is the court deposition itself. According to the provision of Article 99, paragraph 1, of the LCP it is provided that: " the lawsuit, reply to the lawsuit, appeals and other statements, proposals and notices that are made out of court sessions are submitted in writing (court dsubmissions) ... ". Simply put, a lawsuit in the formal sense is a court submission. The lawsuit, regardless of its type, must contain: the specific request in terms of the main issue and accessory requests; the facts on which the plaintiff bases the request; the evidence that proves such facts; the value of the dispute; the legal basis and other data that each submission must have (Procedure, 2008).

The request determined in view of the main issue and the accessory requests. This element of the claim represents the plaintiff's request to the court to issue a court ruling with a certain content. The plaintiff in the statement of the claim must reflect the content of the provision of the desired decision. The court, when deciding on a legal case, is textually bound to the content of the statement of the claim, corresponding to the decision desired by the party. This claim element applies to all types of claims. The defining of the statement of the claim is a

necessary criterion because on its basis it will be known what will be the prestation or obligation that the defendant party must fulfill (Albert Zogaj, 2019). Statement of claim - (Petitum). By means of the statement of claim, the plaintiff formulates the opinion of how the disposition of the adjudgment by which it is accepted shall look like (Faik Brestovci, 2006). So, the statement of the claim must respond textually to the desired decision, because depending on this, the claim and the court's decision will be issued, considering if the lawsuit is permissible and grounded (Iset Morina, 2012). The lawsuit must always consist of the request set in accordance to the main issue and accession requests (Article 253 paragraph 1, point a), of the LCP) (Procedure, 2008). It is important for the plaintiff to specify the request of the lawsuit, because the court is obliged to limit itself within the limits of the claims that have been submitted by the litigants and in this sense, following the conclusion of the judicial process, with a meritorious decision decide whether the lawsuit is grounded. Practically, it is necessary to clarify the statement of claim in an objective point of view (determine the object of the dispute), in a subjective point of view (determine who are the parties to the dispute) and in terms of the amount/volume of the subjective law for the protection of whom the lawsuit is filed. The proposal of the lawsuit (petitum), is the proposal of how the provision of the judgment should be according to the opinion of the plaintiff, but the court can structure the provision of the adjudgment differently regardless of the proposal of the plaintiff, but always accurately preserving the content of the proposal (Albert Zogaj, 2019).

Practical case: The plaintiff in the proposed lawsuit requested compensation for the damage due to bodily injuries and in the name of compensation for physical pain, fear, disfigurement, reduction of general life activity, reduction of working ability, expenses for medication, fortified food and for assistance to the third person, presenting all these requests in one (I) paragraph in the petitum of the lawsuit. The court must decide on the lawsuit by deciding on all categories of damage, as requested by the plaintiff in the lawsuit, but the disposition of the adjudgment can be structured in two (II), three (III) or more paragraphs, and not as presented by the plaintiff initially with only one (I) paragraph. The object of the dispute - The object of the dispute is the issue regarding which there is a dispute (contest) between the plaintiff and the defendant. The object of the lawsuit is what is required as an effect of the lawsuit, i.e. enforcement of the law and realization of the violated right, e.g. return of the item, payment of rent, or ownership of the item (Albert Zogaj, 2019).

The procedure in small value disputes according to the legislation of the Republic of North Macedonia

The Law on Contested Procedure of North Macedonia has determined that, if there are no special provisions in the chapter on the procedure in small value disputes, the other provisions of this law will be applied in the procedure of small value disputes (Macedonia, 2011). Disputes of small value, in the sense of the provisions of this chapter, are disputes in which the lawsuit refers to a claim in money that does not exceed the amount of 180,000 denars or approximately 3,000 Euros. Disputes in which the lawsuit does not refer to a demand for money are also considered small value disputes, and the plaintiff states in the lawsuit that he agrees to receive a certain amount of money in exchange for fulfilling a certain demand that does not exceed the above-mentioned amount. Disputes of small value are also considered disputes in which the subject of the request is not a monetary amount, but the delivery of a movable object, the value of which the plaintiff declared in the lawsuit does not exceed the above-mentioned amount (Macedonia, 2011).

Small value disputes, disputes from labour relationship and disputes due to obstruction of ownership are not considered disputes of small value in the sense of the provisions of this chapter (Macedonia, 2011). The procedure in small value disputes will take place in case of objection against the payment order, if the value of the disputed part of the payment order does not exceed the amount of 180,000 denars (Macedonia, 2011). In the small value disputes procedure, a special appeal is allowed only against the decision with which the procedure is concluded. Other decisions against which an appeal is allowed according to this law can only be disputed by appeal against the decision with which the procedure is concluded. The decisions mentioned in paragraph (2) of this article will not be presented to the parties but will be announced at the hearing and will be incorporated in the written section of the decision (Zoroska-Kamilovska, 2009).

In the small value disputes procedure, the minutes for the main session, in addition to the data from Article 116 paragraph (1) of the LCP, shall contain:

- statements of the parties of essential importance, especially those with which the statement of claim is fully or partially affirmed, or the statement of claim is waived, with which the lawsuit is amended or withdrawn, as well as the statement on the waiver of the right to appeal;
- the essential content of the obtained evidence; the decisions against which the appeal is allowed, and which were announced in the session for the main hearing of the case;
- whether the parties were present when the adjudgement was announced, and in case they were present, if they instructed on the criteria under which they can file an appeal (Macedonia, 2011).

The procedure in small value disputes according to the legislation of the Republic of Montenegro

The Law on Contested Procedure of the Republic of Montenegro has determined that, if there are no special provisions in the chapter on the small value disputes procedure, the other provisions of this law will be applied in the procedure of small value disputes (Montenegro, 2006). Disputes of small value, in the sense of the provisions of this chapter, are disputes in which the statement of claim concerns requests in money of no more than €1,000. Disputes in which the lawsuit is not related to claims in money, but in which the plaintiff has emphasized in his lawsuit that he accepts that, instead of fulfilment of his non-cash request, he is paid the amount of money that is not greater than €1,000 are also considered disputes of small value. A dispute of small value is also considered the one in which the object of the claim is not the amount of money, but the delivery of the movable object whose value, indicated in the lawsuit by the plaintiff, does not exceed the amount of €1,000 (Montenegro, 2006).

In the sense of the provisions of this chapter, disputes related to real estate, disputes from labour relationship and disputes due to obstruction of ownership are not considered disputes of small value (Montenegro, 2006). In the procedure according to the lawsuit for the resolution of small value disputes, the special appeal is allowed only against the judicial ruling with which the court process of the first instance ends. Other rulings, against which a separate appeal is allowed according to this law, can only be appealed by means of an appeal against the decision concluding the procedure. Decisions from paragraph 2 of this article are not sent to the parties separately but announced in the court session and incorporated in the final decision (Montenegro, 2006).

If the plaintiff amends the statement of claim by enlarging it, thereby exceeding the limit of €1,000, the initiated procedure will be continued and concluded according to the provisions for the general contested procedure of this law. If the plaintiff, until the end of the session for the main review of the case that is being developed according to the provisions on the general contested procedure, reduces the claim below the amount of €1,000, the further procedure will be developed according to the rules of this law for the procedure on resolution of small value disputes (Montenegro, 2006).

If the plaintiff does not come to the first session of the main hearing of the case, despite the regular court summons, it will be considered that he has withdrawn the lawsuit, except when the defendant in such session requests to continue with the review of the case in the absence of the plaintiff. However, if both litigants are absent from the first session for the main hearing of the case,

despite the regular court summons, it will be considered that the plaintiff has withdrawn the lawsuit (Montenegro, 2006).

The procedure in small value disputes according to the legislation of the Republic of Serbia

The Law on Contested Procedure of the Republic of Serbia has provided that, unless otherwise regulated in the provisions of this chapter, in the procedure on disputes of small values, the other provisions of this law shall be applied (Serbia, 2014). Disputes of small values, in the sense of the provisions of this chapter, are the disputes in which the statement of claim relates to the collection in cash which does not exceed the counter value in dinars of 3,000 Euros according to the average exchange rate of the National Bank of Serbia on the day of filing the lawsuit. The change of the course from paragraph 1 of this article, following the filing of the lawsuit, does not affect the implementation of the rules of this procedure. Disputes in which the statement of claim is not related to a claim in money, but in which the plaintiff in his lawsuit has emphasized that he accepts that, instead of the fulfilment of his non-cash claim, is paid the amount of money that does not exceed the amount from paragraph 1 of this article (Article 33 paragraph 1) are also considered disputes of small value. A dispute of small value is also considered the one in which the object of the claim is not the amount of money, but the delivery of the movable object whose value, indicated in the lawsuit by the plaintiff, does not exceed the amount from paragraph 1 of this article (Article 33 paragraph 2) (Serbia, 2014).

In the sense of the provisions of this chapter, disputes related to real estate, disputes from labour relationship and disputes due to obstruction of ownership (Serbia, 2014) are not considered disputes of small value. The procedure on disputes of small values will also be carried out during complaints against the receipt, if the value of the disputed part of the receipt does not exceed the counter value in dinars of 3,000 Euros according to the average exchange rate of the National Bank of Serbia on the day of filing the lawsuit (Serbia, 2014). The procedure on disputes of small values is also carried out before the lower courts of the first instance, unless otherwise regulated by this law (Serbia, 2014). In the procedure on disputes of small values, the lawsuit is not sent to the plaintiff for response. The lawsuit will be sent to the defendant with a court summon for the main hearing. In these disputes, no preliminary hearing is scheduled or held (Serbia, 2014). In the summon for the main hearing, it will be mentioned, among other things, that it shall be considered that the plaintiff has withdrawn the lawsuit if he does not come to the main hearing and that the court, if the defendant is

absent from the main hearing, will take the adjudgement due to absence (Article 351).

Comparative analysis of special civil procedure in small value disputes in the legislations explicated above

Following the explication of the legislation of the regional countries regarding the regulation of the special civil procedure in disputes of small value, we can declare that the legislation of North Macedonia, Montenegro and Serbia regulate almost in the same manner as the legislation of Kosovo the special civil procedure in relation to disputes of small value.

The only difference in these legislations is the amount of money. The legislation of North Macedonia has determined that disputes of small value are the disputes in which the lawsuit is about claims in money, the amount of which is not greater than 180,000 denars, approximately 3,000 Euros. The legislation of Montenegro has determined that disputes of small value are disputes in which the lawsuit relates to claims in money, the amount of which is not greater than 1,000 Euros. The legislation of Serbia has determined that disputes of small value are disputes in which the lawsuit is related to claims in money, the amount of which is not greater than 3,000 euros. Whereas the legislation of Kosovo has determined that disputes of small value are disputes in which the lawsuit is related to claims in money, the amount of which is not greater than 500 Euros.

As for the legislation of Albania, it does not provide any explanation regarding small value disputes (Shqipërisë, 2008).

Conclusion

Small-value disputes are handled under special procedures due to their limited nature. These disputes involve monetary claims up to €500 or requests for movable property with a value not exceeding €500. The LCP specifies that disputes related to real estate, labor relationships, and property ownership are excluded from this category.

In small-value disputes, a single judge resolves the case, and no preparatory session is held. If the plaintiff misses the main hearing, it is considered a withdrawal of the lawsuit, unless the defendant requests to proceed without the plaintiff. If both parties are absent from the first session, it is also considered a withdrawal.

The LCP requires that the minutes of the main hearing include essential statements from the parties, details of obtained evidence, and any decisions eligible for appeal. If a claim exceeds €500 during the process, the case will

proceed under general procedures, and if reduced below €500 before the main hearing ends, it will return to small-value dispute procedures.

Decisions in small-value disputes must meet LCP criteria, with immediate announcement after the main hearing. Appeals are only possible on the final decision of the first instance court. Other rulings are part of the final decision appeal. Legislation in North Macedonia, Montenegro, Serbia, and Kosovo generally aligns on small-value disputes, with varying monetary limits. Albania lacks specific provisions for such disputes (Shqipëris, 2009).

Recommendations

- Given the alignment in regulating special civil procedures for small-value disputes across North Macedonia, Montenegro, Serbia, and Kosovo, there's an opportunity for further harmonization. This could streamline legal processes and enhance consistency in the treatment of small-value disputes across these jurisdictions.
- While there's alignment in principles, there are variations in monetary thresholds among the mentioned countries. Reviewing and potentially aligning these thresholds could promote fairness and uniformity, facilitating easier navigation of legal procedures for citizens and businesses operating across these borders.
- Recognizing the absence of specific provisions addressing small-value disputes in Albania's legislation, there's a need for legislative action. Introducing regulations tailored to handle such disputes could enhance access to justice and ensure efficient resolution of smaller claims, contributing to the overall effectiveness of the legal system.
- Encouraging alternative dispute resolution methods, such as mediation or arbitration, could provide quicker and more cost-effective solutions for parties involved in small-value disputes.
- Promote awareness and educate stakeholders, including legal practitioners, judges, and the general public, about the specific procedures and regulations governing small-value disputes. Clear understanding and awareness of rights, obligations, and available legal remedies can empower individuals and businesses to navigate legal processes effectively.
- Encourage periodic review and evaluation of existing procedures and regulations governing small-value disputes to identify areas for improvement. Regular updates and adjustments can help address emerging challenges, adapt to evolving legal landscapes, and ensure the effectiveness and relevance of legal frameworks over time.

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