24 Annex - Justice, freedom and security

164. LAW ON CIVIL PROCEDURE

Pursuant to Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby issue the

Decree Promulgating the Law on Civil Procedure

The Law on Civil Procedure, passed by the Parliament of Montenegro at the first sitting of the first ordinary session in 2004, is promulgated on 23 March 2004.

No: 01-460/2

Podgorica, 29 March 2004

President of the Republic of Montenegro

Filip Vujanović

LAW ON CIVIL PROCEDURE

The Law is published in the Official Gazette of the Republic of Montenegro, 22/04 of 02 April 2004

PART ONE
GENERAL PROVISIONS

TITLE ONE
BASIC PROVISIONS

Article 1

This Law defines rules of procedure on the basis of which the court deliberates and decides on personal and family disputes, labor disputes, property and other civil disputes between natural and legal persons, unless some of the mentioned disputes have been placed under the competence of another public authority under a separate law.

Article 2

In civil procedure the court shall decide within the limits of the claims which have been filed during the procedure.

The court may not refuse to decide on the claim that falls within its competence.

Article 3

The party shall have legal interest for the claim and any other civil action.

Article 4

Parties may freely dispose of claims they filed during the procedure.

They may waive their claim, recognize the claim of the adverse party or settle the dispute.

The court shall not recognize dispositions by parties which contravene mandatory regulations and moral rules.

Article 5

The court shall decide on the statement of claims on the basis of an oral, direct and public hearing.

Exceptionally from the provision of paragraph 1, the court decides on the disputes on the written legal actions and on the basis of indirectly presented evidence if the law prescribes so.

If the law prescribes so, the court may decide that main hearing shall be closed for public.

Article 6

The court shall ensure that each party has the right to present his/her arguments on the claims and statements of the adverse party.

The court shall be authorised to decide upon a claim with regard to which the adverse party has not been given a possibility to respond only when so provided by this Law.

Article 7

The civil procedure is conducted in the language which is in official use in the court.

The parties involved and other participants in the procedure may use their native language or other language which they can understand.

Article 8

Parties shall present all facts on which they ground their claims and present evidence supporting those facts.

The court is authorised to take into consideration facts that were not presented by parties and present the evidence that was not proposed by parties if the outcome of the hearing and presentation of evidence indicate that the parties intend to dispose of claims which they may not dispose of (Article 4, paragraph 3).

Court may not ground its decisions on the facts and evidence about which the parties were not given a possibility to be heard.

Article 9

The court shall decide on its own which facts shall be considered as proved on the basis of conscientious and meticulous evaluation of each individual piece of evidence and all evidence in their entirety, as well as on the basis of the results of entire procedure.

Article 10

Parties, interveners and their representatives shall speak truth before the court and conscientiously use the rights conferred on them under this Law.

Article 11

The court shall conduct the procedure without any unnecessary delay, within reasonable period of time, with the lowest possible costs and shall also prevent any abuse of rights pertaining to the parties in the procedure.

If parties, interveners, their legal representatives and agents intend to cause damage to others or abuse rights guaranteed to them by this Law, which is in contravention with good

practice, conscience and honesty, the court may impose a fine or other measures prescribed by this Law.

Article 12

The party that does not have a qualified representative (a lawyer or a person who passed bar examination) and therefore does not exercise the right provided under this Law because of not being aware of it shall be informed by the court about the civil actions it is entitled to undertake.

Article 13

As a rule, the first instance procedure shall consist of two court deliberations:

1) one preliminary hearing

2) one deliberation for the main hearing.

Article 14

When the court's decision depends on preliminary ruling on the matter as to the existence of a certain right or legal relationship and such a decision has not yet been rendered by the court or another competent authority (Preliminary Matter) the court itself may resolve the matter unless otherwise stipulated by special regulations.

Court decision on a Preliminary Matter shall have legal effect only in the litigation in which that matter has been determined.

Article 15

With respect to the existence of a criminal offence and criminal liability of the offender the court shall be bound in the civil procedure by a final judgment of the court pronouncing the defendant guilty.

Article 16

A single judge shall adjudicate in the first instance procedure and procedure upon the motion for reopening the procedure.

A three judge Panel shall adjudicate in the second instance procedure.

A five judge Panel shall adjudicate in the procedure instituted upon motion for review and request for the protection of legality.

A three judge Panel shall decide on the conflict of jurisdiction and determination of territorial jurisdiction.

Article 17

If for some actions the Law does not prescribe the form in which they may be taken, parties take civil actions in writing outside the hearing and orally at the hearing.

TITLE TWO

COURT JURISDICTION

JOINT PROVISIONS

Article 18

Upon receipt of the claim, the court shall assess if the matter falls within its jurisdiction.

Determination of jurisdiction shall be based on statements in the complaint and the facts known to the court.

If the circumstances on which the jurisdiction of the court is based change during the procedure, the court that was competent at the moment of filing the complaint shall remain competent even if another court would become competent due to those changes.

Article 19

During entire procedure the court shall *ex officio* have due regard to whether the dispute falls within the jurisdiction of the court.

When, in the course of procedure, the court finds that another authority has jurisdiction for resolving the dispute instead of the court it shall declare that it is not competent, annul the actions conducted in the procedure and reject the complaint.

When in the course of procedure, the court finds that a domestic court does not have jurisdiction over the dispute it shall declare that it is not competent, annul the actions conducted in the procedure and reject the complaint, except in cases when jurisdiction of the domestic court is dependant on consent of the defendant whereby the defendant granted consent.

Article 20

During the procedure, the court shall *ex officio* have due regard to its subject matter jurisdiction.

Article 21

If the parties have agreed upon the arbitration in order to resolve a dispute, the court that the claim is filed to in the same dispute between the same parties shall, upon the objection of the defendant, declare itself non-competent, annul actions conducted in the procedure and dismiss the complaint, unless it finds that the arbitration agreement is not legally effective (Article 474 of this Law), that it has ceased to be effective or that it cannot be fulfilled.

Objection referred to in paragraph 1 of this Article may be filed by the defendant to the court at the latest in the response to the claim.

Article 22

If the court finds, before the decision on the main subject matter has been rendered, that the procedure should be conducted in accordance with the rules of non-contentious procedure, it shall suspend the civil procedure. After the ruling becomes legally effective, the procedure shall be continued before the competent court in accordance with the rules of non-contentious procedure.

Actions conducted and decisions rendered by the civil court (on-the-spot investigation, expert evaluation, hearing witnesses and the like) shall not be considered null and void due to the fact that they were conducted in the contentious procedure and they do not need to be repeated.

Article 23

The court may, upon the defendant’s objection, which shall be filed no later than at the time of responding to the complaint, declare that it has no territorial jurisdiction.

The court may *ex officio* declare that it has no territorial jurisdiction only when another court has the exclusive territorial jurisdiction and not after the response to the complaint has been filed.

The court will decide on objection referred to in paragraph 1 of this Article at the preliminary hearing at the latest or at the main hearing if the preliminary hearing has not been held.

Article 24

After the court ruling becomes final and enforceable declaring that the matter does not fall within its jurisdiction (Articles 21 and 23) the court shall promptly, and no later than three days, forward the case to the competent court.

The court, to which the case has been forwarded as the competent court, shall continue the procedure as if they were initiated before that court.

Civil actions taken by non-competent court (on the spot investigation, expert evaluation, hearing of witnesses and the like) shall not be considered null and void due to the fact that they were conducted by the court that was not competent and they do not need to be repeated.

Article 25

If the court to which the case has been forwarded as the competent one considers that the jurisdiction lies with the court that forwarded the case or some other court it shall forward within three days the case to the court which is competent to resolve the conflict of jurisdiction, except if it finds that the case was forwarded to it by obvious mistake when it should have been forwarded to some other court in which case it shall forward the case to another court and notify accordingly the court which has originally forwarded the case.

When the second instance court rendered decision acting on an appeal against first instance decision declaring that it does not have territorial jurisdiction, the determination as to the jurisdiction shall be also binding for the court to which the case has been forwarded if the second instance court which rendered the decision is competent for resolving the conflict of jurisdiction between those courts.

Decision of the second instance court on the subject matter jurisdiction of the first instance court shall be binding for any court to which the same case is subsequently forwarded if the second instance court is competent for resolving the conflict of jurisdiction between those two courts.

Article 26

Until the conflict of jurisdiction is resolved, the court to which the case has been forwarded shall undertake those procedural actions that may be affected by delay.

Appeal shall not be allowed on the ruling that decides on the conflict of jurisdiction.

Article 27

Each court shall conduct procedural actions on its territory of jurisdiction, but if there is a danger of delay the court shall conduct some actions on the territory of another court as well. The court on whose territory the actions are to be taken shall be informed accordingly.

Article 28

In respect to the jurisdiction of the courts of the Republic of Montenegro, provisions of international law shall apply to trials to the foreign citizens who enjoy immunity, trials to the foreign states and international organisations.

JURISDICTION OF COURTS IN DISPUTES WITH INTERNATIONAL ELEMENTS

Article 29

The court of the Republic of Montenegro (hereinafter: Domestic Court) shall be competent to act in the dispute involving international elements when its jurisdiction is expressly provided by the Law or an international treaty.

If the Law or international treaty do not contain an explicit provision about jurisdiction of the domestic court for particular category of disputes, the domestic court shall also be competent to decide in such disputes where its competence originates from the provisions of the Law related to the territorial jurisdiction of the domestic court.

SUBJECT MATTER JURISDICTION

Article 30

In civil procedure, courts shall adjudicate within the scope of their subject matter jurisdiction as prescribed by Law.

DETERMINING THE VALUE OF THE DISPUTE

Article 31

In property disputes, the plaintiff shall state the value of disputed matter.

Only the value of the main claim shall be taken as the value of the disputed matter.

Interests, litigation costs, contractual penalty and other subsidiary claims shall not be taken into account if they are not part of the main claim.

Article 32

If the claim concerns some future installment payments which repeat, the value of disputed matter shall be calculated according to their total sum, but only up to the sum that equals the payments made over a five-year period.

Article 33

If one complaint against the same defendant includes several claims based on the same factual and legal basis the value shall be decided according to the sum of values of all claims.

If claims in the complaint arise from different bases or they have been filed against several defendants the value shall be determined according to the value of each individual claim.

Article 34

Where the dispute concerns existence of a lease or rental agreement or utilization of a dwelling or business premises the value shall be calculated based on one year lease, unless the rent or lease has been contracted for a shorter period.

Article 35

If the complaint requests only the security for certain claim or determination of a pledge right, the value of disputed matter shall be determined according to the amount of claims that need to be secured. If the value of the pledged object is lower than the claim that needs to be secured, the value of the disputed matter shall be the value of the pledged object.

Article 36

If the statement of claims does not disclose a monetary value, but the plaintiff states in his/her complaint that he/she accepts a certain monetary sum, instead fulfillment of that claim, that sum shall be taken as the value of disputed matter.

In other cases, when the statement of claims does not refer to a monetary amount, the value stated by the plaintiff in the complaint shall be taken as the applicable value of the dispute.

Article 37

If the plaintiff has not defined value of disputed matter in the complaint or has evidently set the value of the disputed matter either too low or too high, the court shall *ex officio* or upon objection of the defendant no later than at the preliminary hearing, and if the preliminary hearing has not been held, at the main hearing before the discussion on the main subject matter, in an expedited and appropriate manner check and verify accuracy of the stated value. The court shall decide on it with its ruling against which the appeal shall not be allowed.

TERRITORIAL JURISDICTION

1.General Territorial Jurisdiction

Article 38

If the law does not determine exclusive territorial jurisdiction of some other court, the court that has general territorial jurisdiction for the defendant shall be competent for the trial.

In the cases prescribed by this Law, in addition to the court of general territorial jurisdiction, another designated court shall be competent to adjudicate.

Article 39

The court on whose territory the defendant has permanent place of residence shall have the general territorial jurisdiction for the trial.

If the defendant does not have a permanent place of residence, the court on whose territory the defendant has a temporary place of residence shall have general territorial jurisdiction.

If the defendant, in addition to a permanent place of residence also has a temporary place of residence somewhere else, and the circumstances lead to the assumption that he/she will reside for a longer period of time in that other place, the court which has the territorial jurisdiction over the defendant's temporary place of residence shall have the general territorial jurisdiction as well.

Article 40

In civil procedure against the Republic of Montenegro, local government units and other forms of territorial organisations, general territorial jurisdiction shall be that of the court on whose territory the parliament is seated.

In trials relating to legal persons, the court on whose territory they have their seats shall have the general territorial jurisdiction. In case of doubt, the place where their management is located shall be considered their seat.

Article 41

In civil procedure against citizens of the Republic of Montenegro who live abroad permanently where they have been posted to perform delivery or work by a public authority or legal person, the court on whose territory they had their last permanent place of residence in the Republic of Montenegro shall have general territorial jurisdiction.

2. Special Territorial Jurisdiction

2.1. Exclusive territorial jurisdiction

Jurisdiction in Real Estate Disputes

Article 42

The court on whose territory the real estate is located shall have the exclusive jurisdiction for adjudicating disputes involving ownership rights and other substantive rights in or over the real estate including disputes involving trespass to the real estate and disputes involving rent or lease of real estate.

Where the real estate is located on the territory of several courts each court on whose territory such real estate is located shall be competent.

Jurisdiction in Disputes Involving Military Units

Article 43

In disputes against the state community of Serbia and Montenegro involving military units or institutions, the exclusive jurisdiction shall be that of the court on whose territory the headquarters of the military unit or institution is located.

Jurisdiction over Disputes in Enforcement and Bankruptcy Procedure

Article 44

In disputes that emerge during and as a result of judicial or administrative enforcement procedure or during and as a result of bankruptcy procedure, the exclusive territorial jurisdiction shall be that of the court on whose territory the court for enforcement or bankruptcy procedure is located or the court on whose territory the administrative enforcement takes place.

Article 45

In disputes in which bankruptcy procedure is instituted over the plaintiff and defendant, the territorial jurisdiction shall be that of the court in which the bankruptcy procedure against one of the parties has been instituted earlier.

Exceptionally from the provision of paragraph 1 of this Article, the territorial jurisdiction for deciding on unsecured and secured rights, existence or non-existence of claim towards the bankruptcy debtor and contesting legal actions of the bankruptcy debtor shall be that of the court on whose territory the bankruptcy debtor is seated.

2.2. Elective Territorial Jurisdiction

Jurisdiction in Marital Disputes

Article 46

For conducting disputes whose purpose is determination of existence or non-existence of marriage, annulment of the marriage or divorce of the marriage (marital disputes), in addition to the court of general territorial jurisdiction, the court on whose territory the spouses have had their last joint permanent place of residence shall also be competent.

Jurisdiction in Disputes over Determination or Contesting Fatherhood or Motherhood

Article 47

In the disputes conducted for the purpose of determining of or contesting fatherhood or motherhood, a child may file complaint with either the court of general territorial jurisdiction or with the court on whose territory he/she has permanent or temporary place of residence.

Jurisdiction in Disputes on Maintenance Support

Article 48

For judging in the disputes over maintenance support under the law, if the plaintiff is the person who requires the support, in addition to the court who has general territorial jurisdiction, the court on whose territory of jurisdiction the plaintiff has his/her permanent or temporary place of residence shall also be considered competent.

Jurisdiction in Disputes for Damages

Article 49

In trials concerning non-contractual liability for damages, in addition to the court that has the general territorial jurisdiction, the court on whose territory the damage has been incurred or the court on whose territory the consequence of the damage is felt shall also be competent to adjudicate.

If the damage has been caused as a result of death or severe bodily injury, the court on whose territory the plaintiff has permanent or temporary place of residence shall also be competent to adjudicate in addition to the court referred to in paragraph 1 of this Article.

Provisions of paragraphs 1 and 2 of this Article shall also apply to disputes against insurance company for compensation of damage to third parties, on the basis of regulations on direct liability of insurance companies, while provision of the paragraph 1 of this Article

shall also apply to disputes concerning regress claims for compensation of damages against regress debtors.

Jurisdiction in Disputes for the Protection of Rights Based on Manufacturer's Warranty

Article 50

In disputes for the protection of rights based on written warranty against a manufacturer who issued that warranty, in addition to the court of general territorial jurisdiction for the defendant, the court which has the general territorial jurisdiction for the seller who delivered the manufacturer’s written warranty to the buyer during the sale of the item shall also be competent in the matter.

Jurisdiction in Labor Disputes

Article 51

In a labor dispute where the plaintiff is an employee, in addition to the court that has the general territorial jurisdiction for the defendant, the court on whose territory the service is being done or has been done or the court on whose territory the service should be done as well as the court on whose territory the employee has been employed shall also be competent to adjudicate.

Jurisdiction Based on the Place where Branch Office of Legal Person is Located

Article 52

In disputes against a legal person possessing a branch office in a place different from its seat, if the dispute arose from legal relationships within that branch office, the court where the branch office is located shall also be competent to adjudicate, in addition to the court of general territorial jurisdiction.

Jurisdiction According to the Location of Payment

Article 53

For disputes concerning holder of the bill or check against the signatory, in addition to the court of the general territorial jurisdiction, the court on whose territory the payment has been made shall also be deemed competent.

Jurisdiction in Inheritance Disputes

Article 54

Until the decision in probate procedure has become final and enforceable, the court on whose territory the court conducting the probate procedure is located, in addition to the court that has the general territorial jurisdiction, shall have territorial jurisdiction to adjudicate inheritance disputes and disputes involving claims of creditors towards the deceased.

Jurisdiction in Disputes on Trespassing of Movables

Article 55

In addition to the court of general territorial jurisdiction, the court on whose territory the trespassing occurred shall also be competent to adjudicate disputes on the trespassing of movables.

Jurisdiction in Disputes from Contractual Relations

Article 56

In disputes for determining the existence or non-existence of a contract, for the purpose of enforcement or termination of the contract, as well as in the disputes with a view to the compensation of damages arising from the failure to fulfill of the contract, in addition to the court of general territorial jurisdiction, the court from the place in which defendant, according to the agreement between the parties, is bound to fulfill the contract shall also have territorial jurisdiction.

2.3. Subsidiary Territorial Jurisdiction

Jurisdiction over Co-litigants

Article 57

If one complaint is filed against several individuals (Article 197, paragraph 1, item 1) and the same court does not have the territorial jurisdiction for all of them, the court that has territorial jurisdiction over any one of the defendants shall be competent to adjudicate, whereas if among

them there are main and subsidiary debtors, territorial jurisdiction shall be that of the court of main debtor .

Jurisdiction in Marital Disputes

Article 58

If the domestic court is deemed to have jurisdiction to resolve marital disputes on the basis of the fact that the spouses had the last joint permanent place of residence within the territory of the Republic of Montenegro or because the plaintiff has the permanent place of residence in the Republic of Montenegro, the court of territorial jurisdiction shall be the court on whose territory the spouses had the last joint permanent place of residence or the court within whose territory the plaintiff has the permanent place of residence.

Jurisdiction in Property Rights of Spouses

Article 59

If in the disputes upon property claims of the spouses the domestic court shall be competent because the property of the spouses is located within the territory of the Republic of Montenegro or because the plaintiff at the time of filing the complaint has permanent or temporary residence in the Republic of Montenegro, territorially competent court shall be the court on whose territory the plaintiff has permanent or temporary place of residence at the time of filing the complaint.

Jurisdiction in Disputes over Determination of or Contesting Fatherhood or Motherhood

Article 60

If the domestic court has jurisdiction to resolve the dispute for determination of fatherhood or motherhood because the permanent residence of the plaintiff is in the Republic of Montenegro, territorially competent court shall be that on whose territory the plaintiff has the permanent residence.

Jurisdiction in Disputes on Maintenance Support

Article 61

If a maintenance support dispute includes an international element and the domestic court has jurisdiction because the plaintiff has permanent residence within the territory of the Republic of Montenegro, territorially competent court shall be that on whose territory the plaintiff has permanent residence.

If the jurisdiction of the domestic court in the maintenance disputes exists because the defendant possesses some property on the territory of the Republic of Montenegro from which the maintenance support can be paid, the court on whose area of jurisdiction lies the property shall be deemed competent.

Jurisdiction over the Persons without General Territorial Jurisdiction in the Republic of Montenegro

Article 62

Complaint involving property claims against a person for whom the court of general territorial jurisdiction does not exist in the Republic of Montenegro may be filed with any domestic court on whose territory any property of that person or the object claimed in the complaint are located.

If the jurisdiction of the domestic court exists based on the fact that obligation of the defendant arose during his/her stay in the Republic of Montenegro, the complaint may be filed with the court on whose area the obligation arose.

In disputes relating to persons for whom any court in the Republic of Montenegro has general territorial jurisdiction, where the dispute concerns obligations that are to be performed in the Republic of Montenegro, the complaint may be filed with the court on whose territory the obligation is to be performed.

Jurisdiction Based on the Location of the Representative Office of a Foreign Person in the Republic of Montenegro

Article 63

In disputes against a natural or legal person seated abroad, concerning obligations that arose in the Republic of Montenegro or need to be performed in the Republic of Montenegro, the complaint may be filed with the court on whose territory its permanent representative office for the Republic of Montenegro or the seat of the authority authorised to act on its behalf are located.

3. Reciprocal Jurisdiction in Disputes Involving Foreign Citizens

Article 64

If in a foreign country our citizen may be sued before the court which according to the provisions of the Law would not have territorial jurisdiction for trying in this civil procedure, the same jurisdiction shall be applicable for conducting procedure citizens of that foreign country before the domestic court.

4. Determining Territorial Jurisdiction by the Higher Court

Article 65

If the competent court cannot engage in procedure due to the exemption of a judge or for some other reasons it shall notify the immediately higher court accordingly which shall decide that another court with subject matter jurisdiction from its territory shall conduct the procedure.

Article 66

Upon proposal of a party or a competent court, the Supreme Court may decide that another court with subject matter jurisdiction proceed on the case if it is obvious that this would facilitate the procedure or if there are other justified reasons.

Article 67

If a domestic court is competent to adjudicate the case, but it is not possible to determine which court has territorial jurisdiction under provisions of this Law, the Supreme Court shall, upon the party's motion, decide which court with subject matter jurisdiction shall have the territorial jurisdiction.

5. Agreement on Territorial Jurisdiction

Article 68

If the Law does not prescribe the exclusive territorial jurisdiction of a court, the parties may agree that their case be tried at first instance by a court that does not have the territorial jurisdiction, provided that the court in question has subject matter jurisdiction.

If the Law prescribes that two or more domestic courts in the Republic of Montenegro have territorial jurisdiction in a particular dispute, the parties may agree that their case be tried at first instance by one of these courts or another court with subject matter jurisdiction.

The agreement shall be valid only if it is concluded in writing and if it concerns a particular dispute or several disputes which all arise from a specific legal relationship.

The plaintiff shall submit the agreement together with the complaint.

TITLE THREE

EXEMPTION

Article 69

A judge may not adjudicate the case if:

1) he/she is the party, legal representative or agent, co-agent, co-debtor, regressive debtor, or has taken or is to take the stand as a witness;

2) the party, legal representative or agent of the party is his/her blood relative in direct line to any degree or in the lateral line up to fourth degree, or if they are spouses, non-marital spouses or in-laws up to second degree, regardless of whether the marriage has been terminated or not;

3) he/she is the guardian, adoptive parent or adopted child of the party, party's legal representative or an agent;

4) he/she has participated in rendering decision of the inferior instance court or another authority or has participated in alternative disputes resolution;

5) he/she has participated in reaching the judicial settlement on the case, whereby setting aside that settlement is requested in the appeal;

6) he/she is a shareholder or member of the company that is party to the procedure;

7) there are other circumstances that call into question his/her impartiality.

Article 70

As soon as the judge becomes aware of the reasons for his/her exemption given in Article 66, items 1 through 6 of this Law, he/she shall stop all activities on the case and notify the President of the court thereof.

If the judge believes that there are some other circumstances that may jeopardise his/her impartiality (Article 69, item 7), he/she shall accordingly notify the President of the court who will decide on exemption. By the time the President of the court has issued the ruling, the judge may only undertake the actions that may be jeopardised by the delay.

Article 71

Parties may request exemption as well.

The party may file request for exemption of a judge as soon as he/she learns about reason for exemption, at the latest until conclusion of the hearing before the first instance court and if the hearing has not been held then until rendering the decision.

The request for exemption of the judge of the higher court may be filed by the party in the legal remedy or in the response to the legal remedy, but if the hearing is held before the higher court, then until the completion of the hearing.

Article 72

Parties may only demand exemption of a particular judge who is conducting civil procedure or President of court who will decide on the request.

The request for exemption shall not be allowed in the following cases:

1) if generally the exemption of all judges of a court or all judges who might conduct procedure regarding a case is requested;

2) if it has already been decided upon;

3) if the reason for exemption has not been explained.

The request referred to in paragraph 2 of this Article shall be dismissed by the judge who conducts the procedure.

Interlocutory appeal against the ruling referred to in paragraph 3 of this Article shall not be allowed.

Article 73

President of the court shall decide on the request of the party for exemption of a judge except in cases referred to in Article 72, paragraph 2 of this Law.

If the party requests exemption of the President of the court, the President of an immediately higher court shall render decision on exemption.

Parties' request for exemption of the President of the Supreme Court shall be decided at the general session of that court.

Prior to rendering the ruling on exemption of a judge, a statement from the judge whose exemption is requested shall be taken, while other investigations shall be conducted if deemed necessary.

Appeal against the ruling which grants exemption shall not be allowed and interlocutory appeal against the ruling which denies the request shall not be allowed.

Article 74

Once the judge has learned that the request for his/her exemption has been filed he/she shall immediately stop all activities on the case concerned and if the exemption is the one referred to in Article 69, item 7 of this Law he/she may take only those actions which may be jeopardised by delay and that only by the time of rendering the ruling on exemption.

Exceptionally from paragraph 1 of this Article, the judge may decide to carry on the procedure if he/she evaluates that request for exemption is evidently unjustified and that it has been filed to prevent or obstruct the court in taking specific actions or in order to unnecessary cause the delay.

If the request for exemption is accepted, actions and decisions taken under paragraph 2 of this Article shall be reversed by the judge who will take over the procedure.

Article 75

Provisions on exemption of judges shall accordingly apply to exemption of recording clerks.

The judge shall decide on the exemption of recording clerks.

TITLE FOUR

PARTIES AND THEIR REPRESENTATIVES

Article 76

Any natural and legal person may be party to the procedure.

Special regulations prescribe who may be a party to the procedure apart from natural and legal persons.

Exceptionally, the civil court may, with legal effect in a certain procedure, recognize the capacity of a party to those forms of associations that are not eligible to be a party under provisions of paragraphs 1 and 2 of this Article if it determines that, with regard to the matter of the dispute, they meet crucial requirements for acquiring the capacity of the party, particularly if they are in possession of the property which may be subject to enforcement.

Interlocutory appeal shall not be allowed against the ruling referred to in paragraph 3 of this Article that recognizes the capacity of a party in litigation.

Article 77

A party with full legal competence may conduct actions in the procedure by itself (litigation capacity).

An adult with partially limited legal competence shall be considered to have litigation capacity within the limits of his/her legal competence.

A juvenile who has not acquired full legal competence shall be considered to have litigation capacity within the limits of his/her recognized legal competence.

Article 78

A party without litigation capacity shall be represented by his/her legal representative.

Legal representative shall be determined by Law or act of the competent public authority.

Representative of legal person shall be determined by Law or general act of legal person.

Article 79

In the course of entire procedure the court shall *ex officio* have due regard to whether the person acting as a party to the procedure is eligible to be a party to the procedure and whether that person has litigation capacity, whether a party without litigation capacity is represented by his/her legal representative and whether the legal representative has special authorisation when necessary.

Article 80

On behalf of the party the legal representative may commence all actions in the procedure, but if special regulations prescribe that the legal representative shall have special authorisation in order to file or withdraw the complaint, acknowledge or waive the statement of claims, reach a settlement or take other actions in the procedure, the legal representative may take those actions only if he/she has such authorisation.

At the request of the court, a person engaged as legal representative shall prove that he/she is the legal representative. When special authorisation is required for taking certain actions in the procedure, the legal representative shall prove he/she has such an authorisation.

When the court finds that the legal representative of the person under the guardianship fails to demonstrate the necessary care in the representation, it shall inform the guardianship authority thereon. The court shall suspend the procedure and suggest appointment of another legal representative if it finds that the failure of the legal representative could cause the damage for the person under the guardianship.

Article 81

When the court finds that the person appearing as a party may not be party to the procedure and that the defect may be remedied, it shall summon the plaintiff to make necessary corrections in the complaint or take other measures to continue the procedure with the person that may participate in the procedure in the capacity of a party.

When the court finds that the party has no legal representative or that the legal representative has no special authorisation when requested, it shall ask the competent guardianship authority to appoint a guardian to the party without litigation capacity by asking the legal representative to obtain special authorisation or it shall take other measures necessary to ensure regular representation of the party without litigation capacity.

The court may set the deadline for the party to remedy defects referred to in paragraphs 1 and 2 of this Article. Until the defects are remedied, only those actions whose delay could cause harmful consequences for the party may be commenced in the procedure.

If it is not possible to remedy defects referred above or if the deadline expires unsuccessfully, the court shall reverse by a ruling the actions conducted in the procedure if they have been affected by these defects and dismiss the complaint if the defects are of such nature which may prevent further course of the procedure.

Appeal against the ruling on ordering measures for remedying the defects shall not be allowed.

Article 82

The court shall appoint temporary representative to the defendant if it finds, in the course of the procedure before the first instance court, that the regular procedure for appointment of the legal representative to the defendant could last so long that it could result in harmful consequences for one or both parties.

If the requirement referred to in paragraph 1 of this Article has been met, the court shall appoint temporary representative to the defendant, particularly in the following cases:

1) if the defendant has neither litigation capacity nor legal representative;

2) if there is conflict of interests between the defendant and his/her legal representative;

3) if both parties have the same legal representative.

The court shall also appoint a temporary legal representative of the defendant in the following cases:

1) when the temporary place of residence of the defendant is unknown and the defendant does not have agent;

2) if the defendant or his/her legal representative are abroad and do not have agent and the delivery could not be conducted.

The court shall notify the guardianship authority, and the parties when possible, of appointment of the temporary representative.

Article 83

The court shall accordingly appoint temporary representative to the legal person as well in line with application of Article 80 of this Law.

Article 84

The court shall appoint temporary representative from among lawyers and other professionals.

In cases under Article 82, paragraph 2 of this Law, the defendant shall deposit the amount required for expenses of the temporary representative and in cases under paragraph 3 of same Article the plaintiff shall deposit the amount for expenses.

Article 85

Temporary representative shall have all rights and duties of the legal representative in the procedure for which he/she has been appointed.

Temporary representative shall exercise rights and duties until the defendant or his/her agent appear before the court or until the court is informed by the guardianship authority on appointment of the guardian.

Article 86

If the temporary representative has been appointed to represent the defendant for the reasons stated under Article 82, paragraph 3, items 1 and 2 of this Law, the court shall within eight days issue an announcement in the Official Gazette of the Republic of Montenegro and on the notice board of the court and in other appropriate way if necessary.

The announcement shall contain the following: the name of the court which has appointed temporary representative, legal basis, the defendant's name that the representative has been appointed to, the disputed matter, name of the representative, his/her occupation and temporary place of residence as well as the statement that the representative shall represent the defendant in the procedure as long as the defendant or his/her representative appears before the court or until the guardianship authority notifies the court that it has appointed the guardian.

Article 87

Person without litigation capacity under the law of his/her state who has litigation capacity under the law of the Republic of Montenegro may take actions in the procedure.

His/her legal representative may take actions in the procedure until this person states that he/she takes over conducting of the litigation.

TITLE FIVE

AGENTS

Article 88

Parties may take actions in the procedure either in person or through an agent, but the court may call on the party who has an agent to personally give a statement before the court about the facts that need to be determined in this dispute.

The party represented by the agent may at all times come before the court and give statement besides his/her agent.

Article 89

The agent may be any person capable of conducting business affairs, except persons engaged in shyster.

If the agent is person who is suspected to be a shyster the court shall deny permission to that person for his/her further representation and notify the party immediately.

Appeal against the ruling on denying the permission to represent shall not suspend enforcement of the ruling.

Article 90

Actions in the procedure taken by the agent within the limits of the authorisation shall have the same legal effect as if they had been taken personally by the party.

Article 91

The party may change or revoke statement of his/her agent at the hearing at which that statement is given.

If the agent admitted any fact at the hearing where the party was not present or if he/she admitted any fact in the pleading and the party later on changes or reverses that statement, the court shall evaluate both statements in accordance with Article 218 paragraph 3 of this Law.

Article 92

The scope of authorisation shall be determined by the party.

The party may authorise the agent to take only certain actions or to take all actions in the procedure.

Article 93

If the party issued authorisation to a lawyer for conducting the litigation and did not more closely specify powers in the authorisation, the lawyer shall on the basis of such authorisation have the power to:

1) perform all actions in the procedure and particularly file complaint, withdraw it, respond to the complaint, acknowledge or waive the statement of claims, reach a settlement, submit a request for, waive or withdraw a legal remedy and request issuing the the temporary security measures;

2) file request for enforcement for security measures and take necessary actions in the procedure with regard to that request;

3) receive awarded compensation for costs from the adverse party;

4) transfer authorisation to another lawyer or authorise another lawyer to take only particular actions in the procedure.

Lawyer needs a separate authorisation for filing the motion for reopening the procedure if more than six months have elapsed since the decision has become final and enforceable.

Lawyer may be replaced by a trainee employed with him/her, but only before the court of first instance.

Article 94

If a party failed to fully specify powers of the agent in the authorisation, the agent who is not a lawyer may on the basis of such authorisation perform all actions in the procedure, but he/she shall be always requested to have special authorisation to withdraw the complaint, acknowledge or waive the statement of claims, reach settlement, waive or abandon legal remedy as well as to transfer authorisation to another person and file extraordinary legal remedies.

Agent of the party that is a legal person may without explicit authorisation conduct actions referred to in paragraph 1 of this Article.

Article 95

The party shall grant authorisation in written or verbal form in the record on hearing.

The party who is illiterate or not able to sign authorisation shall put his/her index fingerprint on the written authorisation instead of a signature. In these circumstances, where the authorisation is to be granted to a person that is not a lawyer, the presence of two witnesses shall be required to sign the authorisation.

If the court doubts the authenticity of the written authorisation, it may pass a ruling on ordering the submission of the certified authorisation. Appeal against this ruling shall not be allowed.

Article 96

The agent shall present his/her authorisation when commencing the first action in the procedure.

The court may allow a person who has not submitted authorisation to temporarily perform actions on behalf of the party, but simultaneously it shall order that person to obtain authorisation or approval of the party for performing litigation actions subsequently, within the set time limit.

The court shall postpone rendering the decision until the deadline for obtaining authorisation expires. If the deadline expires unsuccessfully the court shall revoke actions in the litigation conducted by that person and continue the procedure disregarding actions taken by the person without authorisation.

In the course of entire procedure, the court shall have due regard to whether the person acting as the agent has been authorised for such representation. If the court finds that the person acting as agent has not been authorised for such representation it shall revoke actions in the litigation conducted by that person, unless the party subsequently approved those actions.

Article 97

The party may revoke authorisation at any time, whereas the agent may cancel it at any time.

The court before which the procedure is conducted shall be informed in writing or verbally for the record on revoking or canceling the authorisation.

Revoking or canceling the authorisation shall apply to the adverse party from the moment he/she has become informed about it.

After the authorisation has been cancelled the agent shall carry out actions on behalf of the person who granted authorisation for another 15 days if that is necessary to remove any damage that could be caused to the person during that period.

Article 98

When natural person dies or legal person ceases to exist, the authorisation they granted shall also cease to exist.

In the case of bankruptcy or liquidation, the authorisation granted by the bankrupt debtor ceases to be effective on the day when the bankruptcy administrator or liquidator has been appointed.

TITLE SIX

LANGUAGE USED IN THE PROCEDURE

Article 99

Parties and other participants in the procedure are entitled to use their own language or language that they can understand before the court.

If the procedure is not conducted in the language of the party or other participants in the procedure, at their request they shall be provided interpretation to their language or language that they can understand and translation of all pleadings and written evidence, as well as interpretation of what is being said at the hearing.

The parties and other participants in the procedure shall be instructed about their right to follow up the procedure before the court in their own language with assistance of interpreter. It shall be noted in the record that they have been instructed thereon, together with the statements of the parties or participants. Interpretation is provided by interpreters.

Article 100

Summons, decisions and other court writs shall be delivered to the parties and other participants in the procedure in the language which is in official use in the court.

If any of the languages of national minorities is in official use in the court, the court shall deliver court writs in that language to those parties and participants in the procedure that belong to that national minority and use that language in the procedure.

Article 101

Parties and other participants in the procedure shall submit complaints, appeals and other pleadings to the court in the language that is in official use in the court.

Parties and other participants in the procedure may also submit their pleadings to the court in language of national minorities which is not in official use in the court if that is in conformity with the Law.

Article 102

Costs of translation into the language of national minorities arising from the application of the provisions of Constitution and this Law on the right of national minorities to use their own language shall be charged to the court funds.

TITLE SEVEN

PLEADINGS

Article 103

Complaint, response to the complaint, legal remedies and other statements, motions and notifications issued out of the hearing shall be submitted in writing (pleadings). Pleadings submitted by telegram and facsimile or electronic mail are also considered to meet requirements of a writing form. These pleadings shall be considered as signed if the name of the submitter has been indicated on them.

Pleadings shall be comprehensible and contain all items necessary to act upon them. In particular, they shall contain the following: name of the court, the first and last name (title for the legal person), permanent or temporary place residence (seat for the legal person) of parties, their legal representatives and agents, if they have any, disputed matter, contents of the statement and the signature of the submitter.

If the statement contains a request the party shall state in the pleading the facts upon which the request is based and evidence when that is deemed necessary.

Exceptionally from paragraph 1 of this Article, the pleadings delivered via electronic mail shall be verified with an advanced electronic signature.

Article 104

Pleadings with attachments that are to be delivered to the adverse party shall be submitted to the court in a sufficient number of copies for the court and for the adverse party.

Article 105

Documents enclosed with pleadings shall be submitted in the original form, in certified transcript or photocopy that shall be certified.

If the party encloses the original document, the court shall keep that document and allow the adverse party to examine it. When there is no need to keep that document in the court any more, it shall be returned to the submitter upon his/her request, but the court may request from the submitter to attach the transcript or photocopy of the document to the case files.

If the document has been submitted in the form of a transcript or photocopy, the court shall, at the request of the adverse party, call upon the submitter to provide the court with original document and allow the adverse party to examine it. Where necessary, the court shall set the deadline within which the document shall be submitted or examined.

Appeal against these rulings shall not be allowed.

Article 106

If the pleading is incomprehensible or fails to contain all required items in order for the court to proceed, the court shall return the pleading for correction or supplementation. The court will instruct the party as to what needs to be corrected or supplemented and set the deadline for correction or supplementation of the pleading which shall not exceed three days.

If the pleading for which the deadline has been set is corrected, supplemented and submitted to the court within the deadline set for supplementation or correction, it shall be considered to have been submitted to the court on the day of the first submission.

Pleading shall be considered withdrawn if it has not been returned to the court within a set deadline and it shall be rejected if it has been returned without being corrected or supplemented.

If the pleadings or attachments have not been submitted in a sufficient number of copies the court shall invite the submitter to submit them within the set deadline. If the submitter fails to proceed in accordance with that order, the court shall reject the pleading.

TITLE EIGHT

DEADLINES AND HEARINGS

DEADLINES

Article 107

If deadlines are not prescribed by the Law, they shall be determined by the court depending on the circumstances of the case.

Deadline determined by the court may be extended at the motion of the interested person if justified reasons exist.

Motion shall be filed before the expiry of the deadline requested to be extended.

Appeal against the ruling on the extension of deadline shall not be allowed.

Article 108

Deadlines shall be counted in days, months and years.

When a deadline is set in days, the day of delivery or notification shall not be counted, that is the day of the event from which the deadline is to be counted; instead, the first subsequent day shall be taken as the beginning of the deadline.

Deadlines counted in months or years shall end upon expiry of the day of the last month, or year that corresponds by its number to the day when the deadline started. If there is no such day in the given month, the deadline expires on the last day of that month.

If the last day of the deadline falls on the public holiday or Sunday or any other day when the court is not working, the deadline shall end by the expiry of the first following working day.

Article 109

When the pleading is restricted by the deadline it shall be considered submitted within the deadline if submitted to the competent court before the deadline expires.

If the pleading has been forwarded via registered mail or telegram, the day of its delivery to the post office shall be considered as the day of delivery to the court to which it has been addressed and if the pleading was sent via facsimile, the day of its delivery to the court shall be considered as the day of delivery.

If the pleading has been sent via telegram it shall be considered as submitted within the deadline if the pleading of the same contents has been submitted to the court subsequently or if it has been forwarded to the court by registered mail within three days from the date of the telegram submission to the post office.

If the pleading was submitted via electronic mail, the time of delivery to the court shall be considered the time that is noted on the verification of the advanced electronic signature.

For individuals in mandatory military service in the military, the day of delivering the pleading to the military unit or military institution shall be considered as the day of submission of the pleading to the court.

Provision of paragraph 5 of this Article shall also apply to other people who serve in military units or military institutions or military headquarters in towns without access to regular mail service.

As regards people deprived of liberty, the day when the pleading is delivered to the administration of the prison or juvenile detention centre or reformatory shall be considered as the date of delivery to the court.

If the pleading restricted by the deadline was sent to the court that does not have jurisdiction before the deadline expired and it reaches the competent court prior to expiry of the deadline, it shall be considered as delivered in time if the submission to the court which does not have jurisdiction can be attributed to a lack of knowledge or an obvious mistake on the part of the submitter.

Provisions of paragraphs 1 through 7 of this Article shall be applied on the deadline within which, in accordance with special regulations, complaint shall be filed and also on the statute of limitation period of a claim or some other right.

HEARINGS

Article 110

The court shall schedule hearing when so prescribed by Law or requested to meet needs of the procedure.

Appeal against ruling on the scheduling the hearing shall not be allowed.

The court shall summon to the hearing the parties and other participants whose presence is considered needed. Together with the summons, the party shall also receive the pleading that has caused scheduling the court hearing, while the summons shall indicate the place, room and time of the hearing. If the summons do not include the pleading, the summons shall indicate name of the party, disputed matter and action to be taken at the hearing.

In the summons the court shall particularly warn of legal consequences of failure to appear at the hearing.

The party who appeared before the court after the hearing has begun may not require that actions taken in his/her absence be repeated.

Article 111

As a rule, the hearing shall be held in the court house.

The court may decide to hold the hearing outside the court house if it deems that necessary or that it will save time and costs of the procedure in doing so.

RETURN TO THE PREVIOUS STAGE

Article 112

If the party misses the hearing or deadline for certain action in the procedure and therefore loses right to initiate that action, the court shall allow the party, upon his/her motion, to subsequently take that action (return to the previous stage) if it finds that there were justified reasons that could have been neither foreseen nor avoided.

When the return to previous stage is allowed, the litigation shall be reverted into the state that existed before the omission took place and all court decisions rendered due to the omission shall be reversed.

Article 113

The motion for return to the previous stage shall be filed with the court where the omitted action should have been taken.

The motion shall be submitted within eight days, counting from the day when the reason that caused the omission ceased to exist and if the party learned about the omission on some later date, the counting of days shall start from that date.

After the period of 60 days has passed from the day of the omission, return to the previous stage may not be requested.

If return to the previous stage is requested due to missed deadline, the applicant shall conduct the omitted action simultaneously with filing of the motion.

Article 114

Return to the previous stage shall not be allowed if the deadline for filing the motion for return to the previous stage has passed or if the hearing scheduled in the motion for return to the previous stage has been missed.

Article 115

The motion for return to the previous stage, as a rule, does not affect the course of litigation, but the court may decide to suspend the procedure until reaching final and enforceable ruling on the motion.

If the motion for return to the previous stage has been filed, but the appeal procedure is underway before the higher court, the first instance court shall notify the higher court about the motion that has been filed.

Article 116

The court shall by its ruling reject untimely and inadmissible motions for return to the previous stage.

In relation to the motion for return to the previous stage, the court shall set the hearing if expressly so requested by the party, except in case that the facts on which the motion is grounded are commonly known or if the return is proposed for obviously unjustifiable reason or if there is sufficient evidence in the case files for reaching the decision on the motion.

TITLE NINE

COURT RECORDS

Article 117

Actions taken during the hearing shall be entered in the record.

The record shall also include relevant statements or announcements that the parties or other participants make outside the hearing. Irrelevant statements and announcements shall not be entered in the record, but instead they shall only be officially noted in the case file.

The recording clerk shall keep the record.

Article 118

The record shall include the following: name and members of the court, place and hour of action that is to be taken, indication of the disputed matter and names of parties, or third parties and their legal representatives or agents.

The record also needs to contain important information about actions that have been taken. The record on the main hearing shall particularly include: whether the hearing was public or closed for public, contents of the parties' statements, their motions, evidence they proposed, the evidence that was presented, contents of the statements of witnesses and expert witnesses; court decisions rendered at the hearing and original decision following conclusion of the main hearing.

Article 119

The records shall be properly kept, without erasing, adding or changing anything.

Lines that are struck out shall remain legible.

Article 120

The record shall be kept as follows: the judge dictates to the record keeper what to enter in the record. Participants in the procedure may dictate their statements if the judge allows them to do so.

Parties shall be entitled to read the record or demand that it is read to them and give their remarks with regard to the content.

This right shall also apply to other individuals whose statements were entered in the record, but only in respect of that part of the record pertaining to their statement.

Corrections or additions concerning content of the record that need to be made upon objections of the parties or other persons or *ex officio* shall be entered at the end of the record. Objections that were overruled shall be also entered at the request of these individuals.

Article 121

The judge may decide that the record is taken down by use of some technical equipment or by shorthand.

In regards with the objection related to the content of the record referred to in paragraph 1 of this Article, the provisions of Article 120 paragraphs 2, 3 and 4 shall be applied accordingly.

If the record has not been taken down in writing, the transcript of the record shall be made within three days.

In the following three days parties shall be entitled to be shown the transcript of the record and to raise objection to potential irregularities contained therein.

The judge shall decide upon the objection referred to in paragraph 4 of this Article out of the hearing.

Audio tape of the record may be erased after expiry of the term for objections, but if the party has raised objection to the correctness of the copy, it may be erased after the final and enforceable decision on the main subject matter.

Article 122

The record shall be signed by the judge, recording clerk, parties or their legal representatives or agents and interpreter.

Witness and expert witness shall sign their statements in the record when they are heard before the judge carrying out functions on behalf of another judge at his/her request.

An illiterate person or a person who cannot write his/her name shall put his/her index fingerprint and the recording clerk shall write the first and last name for these persons below the fingerprint.

Should any party, his/her legal representative or agent, witness or expert witness leave before signing the record or refuse to sign the record, such an action shall be noted in the record specifying the reasons for non signing.

Article 123

In the procedure in relation to legal remedies, separate record shall be prepared for conferring and voting of the Panel. If the higher court rendered unanimous decision in the procedure on legal remedy, the record shall not be prepared, instead a note on conferring and voting shall be written down in the original decision.

The record on conferring and voting shall contain the course of voting and the decision that has been rendered.

Separate opinions shall be attached to the record on conferring and voting if not already included in the record.

The record or note on voting shall be signed by all Panel members and the recording clerk.

The record on conferring and voting shall be closed in a separate envelope. Only the higher court may review this record when deciding on a legal remedy and in such a case the record shall be put again in a separate envelope, noting on the envelope that the record was reviewed.

TITLE TEN

RENDERING DECISIONS

Article 124

The court renders decisions in the hearing or out of the hearing.

The court renders decisions in the form of a judgment or a ruling.

The court decides on the statement of claims by a judgment, while in the procedure for trespassing the property it decides by a ruling.

In the procedure of issuing the payment order, the ruling under which the statement of claims is adopted shall be issued as a payment order.

Decision on the costs in the judgment shall be considered a ruling.

Article 125

The decisions of the Panel shall be rendered after voting and conferring.

Only the members of the Panel and recording clerk may be present in the room where conferring and voting are taking place.

Article 126

The President of the Panel shall run conferring and voting and he/she is the last one to vote. He/she makes sure that all matters are thoroughly and completely considered.

The majority of votes is necessary for all decisions of the Panel.

The members of the Panel may not refuse to vote on matters set forth by the President of the Panel. A member of the Panel who was among the minority in the previous voting may not restrain from voting on the matter that is to be decided later on.

If in respect to certain matters that are being decided upon the votes are divided between several different opinions so that any of them does not have majority, the matters shall be separated and voting repeated until the majority of votes is obtained. If the votes divide to more than two opinions in respect to the monetary amount or quantity, the reasons supporting each opinion shall be discussed again; if the majority of votes cannot be obtained even then, the votes given for the highest monetary amount or quantity shall be added to the votes given for the first smaller monetary amount or quantity until the majority is obtained.

TITLE ELEVEN

DELIVERY OF WRITS AND REVIEWING CASE FILES

METHOD OF DELIVERY

Article 127

Delivery of writs shall be conducted by post, through an authorised officer of the court, authorised legal person registered to conduct delivery, directly to the court or in some another manner prescribed by Law.

Delivery may be conducted by electronic mail. In that case it will be considered that pleading has been delivered at the moment when it has been sent by electronic mail.

Article 128

Delivery to the public authorities and legal persons shall be conducted by delivery of the writ to the person authorised to receive writs or to the employee who happens to be in office or business premises.

Delivery to the legal person may be conducted to the branch office of the legal person if the dispute arises from legal relationship within that branch.

If the writ needs to be delivered to the public prosecutor or public defendant, writs are being delivered to its records management office. The date of delivery of the writ to the records management office shall be considered the date of delivery.

Delivery under provisions of paragraphs 1 and 2 of this Article shall also be conducted in cases when parties mentioned in these paragraphs have appointed their employee as their agent or if the party has appointed a person who is not their employee as their agent, but has not submitted his/her address.

Article 129

Delivery of summons to military persons, police officers, persons employed in land, river, maritime or air traffic may be conducted through their headquarters or direct supervisor and where necessary delivery of other writs may also be conducted in such manner.

Article 130

When the delivery is to be conducted to persons or institutions abroad or foreigners who enjoy immunity, delivery shall be conducted through diplomatic channels unless otherwise specified by international treaty or this Law (Article 143).

If the delivery of the writ needs to be conducted to the citizens of Serbia and Montenegro living abroad, the delivery may be conducted through the competent consular or diplomatic representative office of Serbia and Montenegro performing consular affairs in the country concerned. This delivery is valid only if the person to whom the delivery is made agrees to accept it.

Article 131

Delivery to the legal person with its seat abroad may be conducted through its branch or representative office in the Republic of Montenegro.

Article 132

Delivery to persons deprived of liberty shall be conducted through the administration of the prison or juvenile detention centre or reformatory in which the person deprived of liberty is accommodated.

Delivery is considered completed after the writ has been delivered to the addressee.

Article 133

If the legal representative or agent represents the party, the delivery shall be conducted to the legal representative or agent.

If the party has more than one legal representative or agent, it shall suffice to carry out the delivery to one of them.

Article 134

Delivery to the lawyer who acts as the agent may be conducted by delivering documents to a person employed in his/her law firm.

If the lawyer practices law in his/her dwelling, Article 137, paragraph 1 of this Law shall apply accordingly.

Article 135

Delivery shall be carried out every day from 07:00 until 20:00 in the dwelling or workplace of the person to whom delivery needs to be conducted or in the court when the person happens to be there.

If the writ cannot be delivered at the address referred to in the previous paragraph and at the mentioned time, it may be delivered at any time and anywhere.

Article 136

Complaint, response to the complaint, summons to the hearing, judgment and ruling against which interlocutory appeal is allowed, legal remedies shall be delivered to the party in person or to his/her legal representative or agent. The other writs shall be delivered in person when this Law explicitly prescribes so or when the court deems that greater caution is necessary due to attached original documents or some other reason.

If the person to whom the delivery shall be conducted in person is not found at the place where the delivery should be conducted, the deliverer shall inquire where and when that person could be found and leave written notice with person from Article 137, paragraphs 1 and 2 of this Law, informing the person to whom delivery is due to be in his/her dwelling or workplace at a specific date and time in order to receive the writ. If after this the deliverer does not find the person

to whom the delivery is meant, provisions of Article 137 of this Law shall apply and thus the delivery shall be considered complete.

Article 137

If the person to whom the delivery is directed is not found at his/her dwelling, the writ shall be delivered to any of adult household members who is obliged to accept the writ and if they are not found in the dwelling the writ shall be delivered to a neighbor if he/she agrees to accept it. Delivery shall thereby be considered complete.

If delivery needs to be conducted at the person's workplace and the person is not found there the delivery may be conducted to a person found in the office if he/she agrees to accept it.

Delivery of writ to another person shall not be allowed if such person is participating in litigation as the adverse party to the person to whom the delivery is to be conducted.

Persons to whom delivery shall be conducted under provisions of this Article shall deliver writ as soon as possible to the person to whom it is addressed.

Article 138

When the person to whom the writ has been addressed or adult member of his/her household or authorised person or employee in government authority or legal person, without having any legally acceptable reason, refuses to accept the writ the deliverer shall leave it in the dwelling or in premises where the person concerned works or he/she shall put up the writ on the door of the dwelling or business premises. He/she shall indicate on the delivery note the date, hour, reasons for refusing acceptance and the place where the writ has been left whereby the writ shall be considered served.

Article 139

If it is established that a person to whom the delivery should be conducted is absent and that the persons referred to in Article 137, paragraphs 1 and 2 of this Law may not deliver the writ on time, the writ shall be returned to the court with the note indicating where the absent person is.

Article 140

If delivery to the entity entered into the register may not be conducted to the address indicated in the register, delivery shall be conducted by posting the writ on the court notice board, while delivery shall be considered complete after expiry of the period of eight days from the day of posting on the court notice board.

Article 141

If delivery to the natural person under provisions of Articles 136 through 139 of this Law is not possible the deliverer shall return the writ to the court which has ordered the delivery. If the delivery is made by post the writ shall be returned to the post office of his/her permanent residence. Notice indicating where the writ is located shall be posted on the door or in the mailbox at the address of his/her permanent residence and the deadline of 15 days shall be set for recipient to take over the writ. Returned writ shall indicate the name of deliverer, reason for such delivery and date when the notice was left to the recipient.

If the recipient fails to take over the writ within 15 days it shall be considered that the delivery was conducted on the day when the notice was left on the door or in the mailbox.

The court which ordered delivery should be notified of the delivery that was conducted as prescribed in this Article.

CHANGE OF ADDRESS

Article 142

If the party or his/her representative change address for delivery during the procedure or before expiry of the deadline of six months after the final and enforceable decision has been rendered, they shall notify the court thereof.

If the request for review is filed against the final and enforceable decision within the deadline referred to in paragraph 1 of this Article, that deadline shall be extended until expiry of six months from the delivery to the party of the decision on the review under which the review is either dismissed or rejected or the contested decision overruled.

If the motion for reopening the procedure is filed against the final and enforceable decision within the deadline referred to in paragraph 1 of this Article, that deadline shall be extended until expiry of six months after rendering the decision that has become final and enforceable in the procedure against which appeal has not been filed or until expiry of the deadline of six months from the delivery of the decision upon appeal to the party.

If the final and enforceable decision is reversed in extraordinary legal remedy procedure and the case remanded for reopening, it shall be considered that the deadline referred to in paragraph 1 of this Article has not started to run.

If the party or his/her representative fail to immediately notify the court about the change of address the court shall determine that further delivery in the litigation be conducted by posting the writs on the court notice board until the party or his/her representative provide the court with a new address.

Delivery referred to in paragraph 5 of this Article shall be considered complete eight days after the notice has been posted on the court notice board.

When the agent authorised to receive writs changes address before expiry of deadlines referred to in paragraphs 1 through 3 of this Article and fails to inform the court thereof, the court shall appoint another representative for receipt of writs on behalf of the party and at the expense of the party through which the delivery shall be conducted until it receives notification from the party on appointment of the new agent.

AGENT AND REPRESENTATIVE WITH POWER FOR RECEIVING WRITS

Article 143

The plaintiff or his/her representative located abroad who do not have the agent on the territory of Serbia and Montenegro shall, when filing the complaint, appoint the agent for receiving writs in Montenegro. If they fail to do so, the court shall appoint, at the expense of plaintiff, a representative for him/her to receive writs and through this representative it shall call on him/her or his/her representative to appoint the agent to receive writs within a set deadline. If the plaintiff or his/her representative fail to appoint agent to receive writs within a set deadline, the court shall dismiss the complaint and deliver the ruling on dismissal to the plaintiff or his/her representative through the appointed representative for the receipt of writs.

The defendant or his/her representative who are located abroad and do not have agent in Serbia and Montenegro shall be directed by the court at the time of delivery of the first writ to timely appoint agent for receiving writs in Montenegro, warning them that otherwise the court shall appoint representative for receiving writs to the defendant at his/her expense and through this representative it shall inform the defendant or his/her representative of such appointment.

If the party terminates authorisation to his/her agent for receiving writs and fails to simultaneously appoint another one for that purpose, the court shall conduct delivery by posting writs on the court notice board until that party appoints another agent for receiving writs.

If the agent for receiving writs cancels authorisation and the party fails to appoint another agent within 30 days from the date when the court has been informed about the cancellation of the agent, the court shall, at the expense of the party, appoint a representative for receiving writs and conduct all deliveries through the appointed representative until it receives notification from the party of appointment of a new agent.

The plaintiff shall advance the funds needed for the plaintiff or defendant's representative for receiving writs. If the plaintiff fails to advance funds the complaint shall be dismissed.

Provisions on appointment of the representative for receiving writs on behalf of the defendant shall also apply to informing the third party about litigation and appointment of the predecessor.

Article 144

If several persons sue jointly and they do not have a joint legal representative or agent the court may direct them to appoint, within a set deadline, a joint agent authorised to receive writs. At the same time, the court shall inform plaintiffs who among them shall be considered a joint agent authorised to receive writs if they do not appoint such agent themselves.

Provision referred to in paragraph 1 of this Article shall also apply when several persons have been sued together as joint co-litigants.

IDENTIFICATION OF ADDRESS

Article 145

The competent authority shall inform the party that has legal interest about the address of the person to whom the delivery should be conducted. Legal interest is proved by the statement of the court about filing the complaint or existence of litigation.

DELIVERY NOTE

Article 146

The recipient and deliverer shall sign the certificate of performed delivery (delivery note). The recipient shall write on the delivery note legibly, in letters, the date of receipt.

If the recipient is illiterate or unable to sign the deliverer shall write out his/her first and last name and date of receipt in letters, indicating the reason why the recipient did not put his/her signature.

If the recipient refuses to sign the delivery note, the deliverer shall indicate that on the delivery note and put in letters the date of delivery and thereby it will be considered that the delivery has been conducted.

If delivery has been conducted in accordance with the provision of Article 136, paragraph 2 of this Law, in addition to the certification of receipt of the writ, the delivery note shall also indicate that the written notice was previously served.

If, under provisions of this Law, the writ has been delivered to another person and not to the person to whom the writ should have been served, the deliverer shall indicate on the delivery note the relationship between these two persons.

If the date of the delivery has been incorrectly indicated on the delivery note, the delivery shall be considered conducted on the date when the writ has actually been handed over.

If the delivery note has disappeared, the delivery may be proved in another way.

DELIVERY BY PARTIES

Article 147

The party may deliver pleading to the adverse party with the consent of the court except for the writs that must be delivered in person.

In the case referred to in paragraph 1 of this Article, the party shall deliver one copy in person to the adverse party in compliance with provisions of this Law prescribing delivery and one copy to the court with the notification that the delivery to the adverse party has already been conducted.

Delivery under paragraph 2 of this Article shall be considered duly performed.

REVIEWING AND TRANSCRIBING FILES

Article 148

Parties shall be entitled to review and transcribe case files related to the litigation in which they participate.

Reviewing and transcribing of certain files may be permitted to other persons who have justified interest to do so.

Permission shall be granted by the judge or President of the Panel when the procedure is underway and when the procedure has been terminated it shall be granted by the President of the court or employee of the court designated by him/her.

TITLE TWELVE

COSTS OF PROCEDURE

LITIGATION COSTS

Article149

Litigation costs shall include expenses incurred during the procedure or in connection therewith.

Litigation costs shall also include the remuneration for work of attorneys and other persons whose right to remuneration is envisaged by Law.

Article 150

Each party shall individually and in advance bear the costs incurred by his/her actions.

Article 151

When the party proposes presentation of evidence he/she shall, pursuant to the court order and in advance, deposit the amount required for covering the costs to be incurred by the presentation of evidence.

The court shall reject presentation of evidence if the amount required for bearing the costs is not deposited within the deadline set by the court.

Exceptionally from the provision of paragraph 2 of this Article, if the court orders presentation of evidence *ex officio* in order to establish facts referring to the application of Article 4, paragraph 3 of this Law and the parties fail to deposit the amount that has been set, the costs of the presentation of evidence shall be paid out from the court funds.

Article 152

The party that has lost the litigation in its entirety shall bear costs of adverse party and his/her intervener.

If the party was partially successful in the litigation the court may, depending on the success achieved, order each party to bear their own costs or order one party to bear a proportionate part of costs of the other party and the intervener.

The court may order that one party bears all the costs incurred by the adverse party and his/her intervener if the adverse party failed to succeed in proportionately small part of his/her claim and no separate costs were incurred in connection to that part.

On the basis of the outcome of the presentation of evidence, the court shall decide if the costs referred to in Article 151 paragraph 3 of this Law shall be borne by one or both parties or whether these costs shall be borne from court funds.

Article 153

When deciding on the costs that are to be reimbursed to the party, the court shall take into account only the costs necessary for conducting the litigation. When deciding which costs have been necessary and the amount thereof, the court shall thoroughly evaluate all circumstances.

Rewards and remunerations for the work of attorneys shall be measured up according to the valid tariff.

Article 154

Regardless of the outcome of the litigation, the party shall reimburse costs to the adverse party which have been incurred by his/her fault or incident that happened to him/her.

The court may decide that legal representative or agent of the party reimburse costs to the adverse party which have been incurred by his/her guilt.

Requests for reimbursement of costs referred to in paragraphs 1 and 2 of this Article shall be determined in a ruling rendered by the court, separately from the decision on the main subject matter.

Article 155

If the defendant has not presented the cause for the complaint, and in response to the complaint or at the preliminary hearing or at the main hearing if the preliminary hearing has not been held, and before starting deliberation on the main subject matter, he/she acknowledges the statement of claims the plaintiff shall reimburse litigation costs to the defendant.

Article 156

The plaintiff who withdraws the complaint shall reimburse litigation costs to the adverse party, except if the withdrawal occurred immediately after the defendant has met the claim.

The party who waives legal remedy shall reimburse costs to the adverse party incurred with regard to the legal remedy.

Article 157

A judicial settlement shall also contain the agreement on costs.

If the parties fail to reach agreement each party shall bear their own costs.

The costs of attempted but unsuccessful settlement shall be included in the litigation costs.

Article 158

If the statement of claims is accepted in the dispute on secured right for securing the object and the court finds that the defendant being creditor in the enforcement procedure has had justified reasons to believe that rights of third parties over these objects do not exist, it shall decide that each party bear their costs.

Article 159

Co-litigants shall bear costs in equal shares.

If there is a considerable difference with respect to their share in the disputed matter, the court shall proportionally determine the share of costs to be borne by each co-litigant.

Costs incurred by special litigation actions of individual co-litigants shall fall within responsibility of the other co-litigants.

Co-litigants who are jointly liable for the liability arising from in the main subject matter shall be jointly liable also for the costs awarded to the adverse party.

Article 160

If the appointed predecessor takes the role of the defendant, the original defendant may not file the request for the reimbursement of costs in the litigation from which he/she has withdrawn.

If the predecessor succeeds in the litigation he/she may claim reimbursement of costs of the original defendant as part of his/her costs.

If the procedure terminates unfavorably for the new defendant, he/she shall reimburse costs to the plaintiff which the original defendant caused by his/her actions.

Article 161

At the specific request of the party, the court shall decide on the reimbursement of costs.

The party shall precisely define in his/her request the costs whose reimbursement is required, enclosing the evidence for the costs incurred unless they are already contained in the case files.

The request for reimbursement of costs shall be filed by the party not later than upon the completion of the deliberation which precedes rendering of the decision on costs and if the decision is to be rendered without a prior deliberation the party shall include the request for reimbursement of costs in the motion to be decided by the court.

The court shall decide on the request for reimbursement of costs either in judgment or in the ruling which concludes the procedure before that court.

In the course of the procedure, the court shall decide on reimbursement of costs by the separate ruling only when the right to the reimbursement of costs does not depend on the decision on the main subject matter.

In the case referred to Article 156 of this Law, if the withdrawal of the complaint or waiver of legal remedy have not taken place at the hearing, the request for reimbursement of costs may be filed within 15 days upon the receipt of the notification on the waiver.

Article 162

When rendering partial judgment or interim judgment, the Court may determine that the decision on costs be left for a later judgment.

Article 163

When the court dismisses or rejects a legal remedy it shall also decide on the costs incurred in the procedure upon the legal remedy.

When the court overrules the decision against which the legal remedy has been filed or reverses that decision and dismisses the complaint it shall decide on the costs of entire procedure.

When the decision against which the legal remedy has been filed is reversed and the case has been remanded the costs of the procedure on legal remedy shall be decided in final decision.

The court may act in accordance with the provision of paragraph 3 of this Article also in the case when it only partially reverses the decision against which legal remedy has been filed.

Article 164

Decision on costs included in the judgment may be contested only by an appeal against the ruling provided that the decision on the main subject matter is not contested at the same time.

If one party contests the judgment only in respect to the costs and the other one in the part related to the main subject matter the higher court shall decide on both legal remedies by one decision.

COSTS INCURRED IN THE PROCEDURE ON PROVISION OF EVIDENCE

Article 165

The party who has filed the motion for provision of evidence shall reimburse costs incurred in the procedure for the provision of evidence. He/she shall also reimburse costs to the adverse party or the temporarily appointed representative.

The party may subsequently recover those costs as the part of litigation costs depending on the success in the litigation.

EXEMPTION FROM PAYING COSTS OF THE PROCEDURE

Article 166

The court shall exempt the party from paying the costs of the procedure if according to his/her general financial situation the party may not bear the costs without jeopardizing necessary support of himself/herself and his/her family.

Exemption from payment of the costs of the procedure shall include exemption from paying court charges and depositing advance payment for the costs of witnesses, expert witnesses, on the spot investigation and court advertisements.

The court may exempt the party only from payment of charges if such payment of charges would considerably reduce resources for supporting the party and his/her family members.

When rendering decision on the exemption from payment of the costs of the procedure the court shall carefully consider all circumstances and especially take into account value of the dispute, number of persons supported by the party and income of the party and his/her family members.

The decision on exemption from the payment of the costs of procedure shall be rendered by the court within eight days from the date when the request has been filed.

Article 167

The decision on exemption from the payment of the costs of procedure shall be rendered by the first instance court at the motion of the party.

Together with the motion the party shall also submit the statement of the competent authority on his/her financial situation.

The statement on financial situation shall indicate the amount of taxes paid by the household and individual members of the household, as well as other sources of their income and general financial situation of the party to whom the statement has been issued.

When necessary, the court may *ex officio* obtain necessary information and notifications about financial situation of the party requesting exemption and it may also hear the adverse party thereof.

Appeal against the court ruling which approves the motion of the party shall not be allowed.

Article 168

When the party based on his/her financial situation is not able to bear costs of attorney at law the first instance court shall, at the party's request, order that he/she be represented by an agent if that is necessary for protection of party's rights.

The party to whom the agent has been appointed shall be exempted from paying the actual expenses and remuneration for the appointed agent.

President of the first instance court shall appoint attorney at the law as an agent.

An appointed agent may request to be exempted due to justified reasons and the judge conducting procedure for the case shall decide thereon. Appeal against the decision on exemption of the agent shall not be allowed.

Article 169

When the party is completely exempted from paying the costs of procedure (Article 166, paragraph 2), as well as in case from Article 168, paragraph 1 of this Law, the advance for the costs for witnesses, expert witnesses, on the spot investigation, issuance of the court advertisement and actual expenses and remuneration of the appointed agent shall be paid from the court funds.

Article 170

During the procedure, the first instance court may reverse the ruling on exemption from the payment of costs of the procedure and appointment of the agent if it establishes that the party is able to bear costs of the procedure. In such cases the court shall decide whether the party shall entirely or partially reimburse costs and charges which he/she has previously been exempted from, as well as actual expenses and remuneration of appointed agent.

Amounts advanced from the court funds shall be reimbursed first.

Article 171

Charges and costs advanced from the court funds, as well as actual expenses and remuneration of appointed agent shall constitute part of litigation costs.

Under provisions on reimbursement of costs, the court shall decide on reimbursement of these costs by the adverse party that has been exempted from the payment of the costs of procedure.

The first instance court shall *ex officio* collect charges and costs paid from the court funds from the party obliged to reimburse those costs.

If the adverse party, that has been exempted from the payment of the costs of procedure, has been bound to reimburse litigation costs and it is established that he/she is not able to bear the costs, the court may subsequently order that the costs referred to in paragraph 1 of this Article be entirely or partially paid by the party who has been exempted from the payment of costs of the procedure from the part awarded. Thus the right of the party to request reimbursement from the adverse party for what he/she has already paid shall not be affected.

TITLE THIRTEEN

LEGAL AID

Article 172

Courts shall provide legal aid to one other in civil procedure.

If the court which was requested to provide legal aid is not competent to conduct the action which it was requested to conduct, it shall pass the request to the competent court or other public authority and notify the court from which it had received the request thereof. If it is not familiar with the competent court or the public authority, it shall send the request back.

Article 173

Courts shall provide legal aid to foreign courts in cases envisaged by an international treaty and in the event of existence of reciprocity on the provision of legal aid. In case of doubt regarding the existence of reciprocity the Ministry of Justice shall produce explanation.

The court shall deny legal aid to a foreign court if the performance of the action requested is contrary to the public order. In that case the court competent for the provision of legal aid shall *ex officio* submit the case to the Supreme Court to render final decision.

Provision of Article 172, paragraph 2 of this Law shall apply when handling requests from the foreign court.

Article 174

The courts shall provide legal aid to foreign courts as prescribed by national law. The action, which is the subject of the request of a foreign court, may also be taken in the manner requested by the foreign court if such action is not in contravention with public order.

Article 175

Unless otherwise prescribed by international treaty, courts shall act on request from foreign courts only if they have been submitted through diplomatic channels and if requests and attachments thereto are composed in the language officially used in the court or if the certified translation to that language is enclosed.

Article 176

Unless otherwise prescribed by international treaty, the requests of the domestic courts for legal aid shall be delivered to foreign courts through diplomatic channels. Requests and attachments thereto shall be composed in the language of the country from which aid is requested or their certified translation in that language shall be enclosed as well.

TITLE FOURTEEN

CONTEMPT OF COURT

Article 177

In the course of procedure the court shall impose a fine in the amount of EUR 1 000 on the party, legal representative, agent or intervener who tend to abuse through their civil actions the rights recognized under this Law.

If the action referred to in paragraph 1 of this Article caused damage to some of the participants the court shall award the aggrieved party, upon his/her request, the compensation of damage.

Article 178

The court shall impose fine in the amount of EUR 1 000 on a person or other participant in the procedure who insults the court in the pleading.

If the person participating in the procedure or person attending the hearing insults the court or other participants in the procedure, impedes the work or fails to obey orders of the judge concerning maintenance of order, the judge shall give warning to him/her. In case the warning is unsuccessful, the judge shall order the cautioned person to leave the courtroom or impose fine in the amount of EUR 1 000 and he/she may also order the person to leave and impose the fine on him/her.

If the party and his/her agent are ordered to leave the courtroom, the hearing shall be held in their absence as well. If the agent in the further course of the procedure carries out activities referred to in paragraphs 1 and 2 of this Article the court may reverse their representation.

When the court imposes fine or orders an attorney or law trainee acting as an agent to leave the courtroom, he/she shall notify the Bar Association thereof.

Article 179

The court shall impose fine up to the amount of EUR 500.00 on the agent authorised for the receipt of writs if in contravention with the provisions of Article 142 of this Law he/she fails to inform the court about the change of address.

The court shall, at the request of the party, order the agent for the receipt of writs to reimburse costs incurred by unjustified failure to notify the court about the change of address.

Article 180

The court shall impose fine up to the amount of EUR 500.00 on persons who obstruct delivery of writs, conscientiously preventing or hampering the application of the provisions of this Law regarding delivery.

The court shall, at the request of the party, order the person referred to in paragraph 1 of this Article to reimburse costs incurred by the his/her behavior described under paragraph 1.

Article 181

If the duly summoned witness fails to appear as well as to justify his/her absence or if he/she leaves the place of hearing without permission or justified reason, the court shall order that he/she be brought in by force, bear the costs of his/her bringing in and shall fine him/her with the amount of EUR 500.00.

If the witness appears and refuses to testify or answer a certain question despite warning of the consequences and the court determines that his/her reasons for refusal are unjustified, it shall fine him/her with the amount of up to EUR 500.00 and if he/she still refuses to testify it may order his/her imprisonment. Imprisonment shall last until the witness consents to testify or until his/her interrogation becomes unnecessary, but it shall not exceed 30 days.

The court shall, at the request of the party, order the witness to reimburse costs incurred by his/her unjustified absence or unjustified refusal to testify.

If the witness subsequently justifies his/her absence, the court shall reverse its ruling on the fine and may exempt the witness entirely or partially from the reimbursement of costs. The court may revoke its ruling on the fine also when the witness subsequently consents to testify.

Article 182

The court shall fine expert witness up to the amount of EUR 500.00 when he/she fails to deliver findings and opinions within the set deadline or unjustifiably fails to appear at the hearing, although duly summoned.

The court shall impose the fine referred to in paragraph 1 of this Article on the expert witness who refuses to perform expert evaluation without justified reason.

The court shall, at the request of the party, order the expert to reimburse costs incurred by his/her failure to submit findings and opinions, unjustified absence or unjustified refusal to perform expert evaluation.

The court may revoke ruling on the fine under the conditions referred to in Article 181, paragraph 4 of this Law.

Provisions of this Article shall accordingly apply to court interpreters.

Article 183

If the person who has been fined under the provisions of this Law fails to pay the fine within the set deadline, the fine shall be replaced by imprisonment sentence the duration of which shall be determined by the court in accordance with the amount of the fine and under provisions of the Criminal Code, but it shall not exceed 30 days.

Article 184

Appeal against the ruling under Articles 177, 178, 179, paragraph 1, Article 181, paragraph 1 and Article 182, paragraph 1 of this Law shall not suspend enforcement of the ruling.

Appeal against the ruling under Article 181, paragraph 2 and Article 182, paragraph 2 shall not suspend enforcement of the ruling, unless the court decision on rejecting the reasons of the witness for failing to give testimony or the answer to the certain question or reasons of refusal of the expert witness to perform expert evaluation is contested in that appeal.

Article 185

If the person, who replaces public prosecutor or public defendant taking action in the procedure on their behalf impedes order, the court shall notify public prosecutor or public defendant thereof and may also postpone the hearing and require from public prosecutor or public defendant to designate another person to participate in the civil procedure.

PART TWO

THE COURSE OF CIVIL PROCEDURE

TITLE FIFTEEN

Article 186

Civil procedure starts by filing the complaint (for acting, by determination and transformation).

CONTENT OF THE COMPLAINT

Article 187

The complaint shall contain the specific claim in respect of the main subject matter and subsidiary claims, facts on which the plaintiff bases his/her claim, evidence proving those facts and other data that are mandatory for each pleading (Article 103).

The court shall act upon the complaint even if the plaintiff has not stated legal basis of his/her statement of claims and if the plaintiff has stated such legal basis the court is not bound by it.

The plaintiff shall attach to his/her complaint a receipt on the payment of the court charge.

If the plaintiff fails to pay the prescribed charge after the warning sent by the court in accordance with the regulations on court charges and if the conditions for his/her exemption from the payment of charges do not exist, the complaint shall be considered withdrawn.

COMPLAINT FILED FOR DETERMINATION

Article 188

The plaintiff may request in the complaint that the court make a determination only as to the existence or non-existence of a right or legal relationship or the authenticity or falsity of a document.

Such complaint may be filed when the special regulations so prescribe, when the plaintiff has legal interest in court's establishing the existence or non-existence of a right or legal relationship or authenticity or falsity of a document before the maturity of the claim arising from that relation.

If the decision on the dispute depends on the existence or non-existence of the right or legal relationship which became disputable in the course of the litigation the plaintiff may, in addition to the existing claim, file the statement of claims with the court in order for it to determine whether such a relation exists or not if the court conducting the litigation is competent to decide on such a claim.

Claims under paragraph 3 of this Article shall not be considered as an alternation of the complaint.

FILING SEVERAL STATEMENTS OF CLAIMS IN ONE COMPLAINT

Article 189

The plaintiff may state several claims in one complaint against the same defendant when all claims arise from the same factual and legal basis. If the claims do not arise from the same factual and legal basis they may be filed in one complaint against the same defendant only when the same court has subject matter jurisdiction for each of those claims and when the same type of procedure is prescribed for all claims whereby the court finds that filing these statements of claims in one complaint contributes to the efficiency of the procedure (cumulative jointer).

The plaintiff may file two or more interrelated statements of claims in one complaint and request the court to accept the next claim if it finds that the one filed prior to it is not grounded (alternation of claims).

Under paragraph 2 of this Article the claims may be united in one complaint only if the court has subject matter jurisdiction for each of those claims and if the same type of procedure is prescribed for all claims.

After the judgment on accepting the first claim has been rendered the procedure upon the perspective claim shall cease to run.

COUNTER – CLAIM

Article 190

In the response to the complaint and at the preliminary hearing at the latest or at the first deliberation for the main hearing if the preliminary hearing has not been held, the defendant may file the counter-claim if:

1) the counter-claim is related to the statement of claims (connected);

2) if these claims may be reimbursed (compensative);

3) if the counter-claim is filed in order to determine a right or legal relationship on whose existence or non-existence the decision on the statement of claims depends entirely or partially (prejudicial).

After the hearing referred to in paragraph 1 of this Article the counter-claim may be filed only with the consent granted from the plaintiff.

The counter-claim may not be filed if the court of another type has subject matter jurisdiction over the counter-claim.

In the case described in paragraph 1, item 1 of this Article the court may decide to separate the counter-complaint procedure if so required by reasons of effectiveness.

ALTERNATION OF THE COMPLAINT

Article 191

The plaintiff may alter the complaint before conclusion of the preliminary hearing at the latest or beginning of the main hearing if the preliminary hearing has not been held. In such case the court is bound to leave the defendant an adequate period of time for preparation for the hearing on the altered claim if the defendant has not had enough time to do so.

After the preliminary hearing and before conclusion of the main hearing at the latest, the court may permit alternation of the complaint only if it concludes that the purpose of the alternation is not to delay the procedure and if the defendant consents to the alternation.

It shall be considered that the defendant consented to the alternation of the complaint if he/she presents arguments on the main subject matter under the altered complaint, without previously having contested the alternation.

In the case referred to in paragraph 2 of this Article, the court shall permit alternation of the complaint even when the defendant objects to alternation if the plaintiff, without his/her fault, could not have altered the complaint earlier and the defendant is in a position to present arguments on the altered complaint without causing delay to the main hearing.

If the complaint has been altered at the hearing at which defendant was not present, the court shall postpone the hearing and deliver transcript of the court record from the hearing to the defendant.

Appeal against the ruling on allowing the alternation of the complaint shall not be allowed.

Article 192

Alternation of the complaint is modification of the original statement of claims, augmentation of the existing claim or statement of another claim in addition to the existing one.

If the plaintiff alters the complaint in such a way that he/she, because of circumstances brought about after the complaint has been filed, claims another object or amount of money on the same factual basis the defendant may not object to such alternation.

The complaint shall not be considered altered if the plaintiff altered legal basis of the claim, reduced the claim, or modified, supplemented or rectified certain statements whereby the statement of claims remained unchanged.

Article 193

Under conditions referred to in Article 191 of this Law, the plaintiff may alter his/her complaint by suing another person instead of the original defendant.

Consent of the person who is to join the litigation instead of the original defendant shall be required for the alternation of the complaint under paragraph 1 of this Article and if the original defendant has already presented arguments on the main subject matter, consent of the defendant shall also be required.

The person joining the litigation instead of the original defendant shall accept the litigation in the state existing at the moment he/she enters the litigation.

WITHDRAWAL OF THE COMPLAINT

Article 194

The plaintiff may withdraw the complaint without consent of the defendant before the defendant provides response to the complaint.

The complaint may also be withdrawn later, before conclusion of the main hearing if the defendant grants consent thereto. If the defendant does not make statement thereof within eight days from the date of the receipt of the notification of withdrawal the complaint, it shall be considered that he/she has consented to withdrawal.

If the complaint has been withdrawn the court shall render ruling which determines that the complaint has been withdrawn. Such ruling shall be delivered to the defendant only if the complaint has been previously delivered to him/her.

Withdrawn complaint shall be considered as not having been filed and may be filed again.

EXISTENCE OF LITIGATION

Article 195

Litigation shall start to run from the date the complaint is delivered to the defendant.

With respect to the claim put forward by the party in the course of the procedure, the litigation shall start to run from the moment of notification of the adverse party of the claim.

During the course of litigation, a new litigation may not be initiated among the same parties regarding the same claim and if such litigation is initiated the court shall reject the complaint.

The first instance court shall *ex officio* have due regard to whether another litigation between the same parties regarding the same claim is already underway.

Article 196

If one of the parties alienates an object or the right that is the subject of the litigation, this shall not prevent continuation of the litigation.

The person who acquired the object or the right that is subject of the litigation may enter the procedure as plaintiff or defendant only if the parties grant consent thereto.

In the case referred to in paragraph 1 of this Article, judgment becomes effective either tp the benefit or against the acquirer.

TITLE SIXTEEN

CO - LITIGANTS

Article 197

Several individuals may institute or be subject to civil procedure in one complaint (co-litigants) if:

1) they are in legal relationship with regard to the disputed matter or if their rights and obligations arise from the same factual and legal basis (material co-litigants);

2) subject matter of the dispute are claims or obligations of the same type based on an essentially similar factual and legal basis and if there is subject matter and territorial jurisdiction of the same court for each claim and each defendant (formal co-litigants);

3) this is prescribed by another law.

Before conclusion of the preliminary hearing or deliberation for the main hearing if the preliminary hearing has not been held and under conditions referred to in paragraph 1 of this Article, a new plaintiff may join the plaintiff or the complaint may be extended to include another defendant with his/her consent.

Person joining the complaint or person to whom the complaint is being extended shall accept the status of the litigation at the date of the joiner.

Article 198

Plaintiff may institute procedure against two or more defendants in one complaint by requesting that the statement of claims be accepted against the subsequent defendant if it has been finally refused with a view to the one who is stated in the complaint before him/her (subsidiary co-litigation).

Under paragraph 1 of this Article the plaintiff may institute procedure against two or more defendants in one complaint only if he/she states the same claim against each one of them or states different interrelated claims against each one of them and if the same court has subject matter and territorial jurisdiction for each claim.

Article 199

The person, entirely or partially claiming a matter or a right which is the subject of litigation between other people may sue both parties in one complaint before the court where the procedure is underway before final and enforceable conclusion of the procedure is reached (main intervention).

If the court decides to stay the procedure in the first litigation the judgment by which the claim of the main intervener has been accepted is considered prejudicial.

Article 200

The main debtor and warrantor may be sued together if that it is not in contravention with the substance of their warranty agreement.

Article 201

Each co-litigant shall be independent party in the litigation and his/her actions or omissions shall neither benefit nor harm other co-litigants.

Article 202

If, according to law or due to the nature of legal relationship, the dispute may be resolved only equally for all co-litigants (joint co-litigants) they shall be considered as one litigant party, so that if certain co-litigants omit a litigation action, the effect of litigation actions taken by other co-litigants shall be extended to include those who have not undertaken these actions.

If co-litigants take different litigation actions the court takes into account that action which is the most favourable for them.

Article 203

If deadlines for performing certain litigation action for individual joint co-litigants expire at different times, such litigation action may be commenced by any co-litigant for which the period for commencement of such action is still running.

Article 204

Each co-litigant shall be entitled to file motions regarding the course of the litigation.

TITLE SEVENTEEN

PARTICIPATION OF THIRD PARTIES IN LITIGATION

PARTICIPATION OF INTERVENERS IN LITIGATION

Article 205

A person having legal interest in success of one party in the ongoing litigation between other individuals may join that party.

Intervener may join ongoing litigation before the decision on the statement of claims becomes final and enforceable and during the extraordinary legal remedy procedure.

A statement on joining the litigation may be given by the intervener at the hearing or in the pleading.

The pleading of intervener shall be delivered to both litigants and if the statement of intervener has been given at the hearing, the transcript of that part of the record shall be delivered only to the litigant who failed to appear at the hearing.

Article 206

Each party may contest participation of intervener in the procedure and propose that the participation of the intervener be denied.

Until the ruling on denying participation of an intervener becomes final and enforceable the intervener may participate in the procedure and his/her litigation actions may not be excluded.

Interlocutory appeal against court decision on accepting participation of intervener shall not be allowed.

Article 207

When joining the litigation, the intervener shall accept litigation in the existing state at the moment he/she joins. In the further course of the litigation he/she shall be authorised to file motions and take other litigation actions within time limits in which the party he/she has joined might take actions.

If the intervener has joined the litigation before the decision on the statement of claims has become final and enforceable he/she shall also be entitled to file an extraordinary legal remedy.

If the intervener files legal remedy, the copy of that same pleading shall also be delivered to the party he/she has joined.

Litigation actions of the intervener have legal effect on the party he/she has joined if they do not contravene actions of the party.

After the consent granted by litigants, the intervener may enter the litigation as a party instead of the party he/she has joined.

Article 208

If legal effect of the judgment also applies on the intervener, he/she has the status of joint co-litigant (Article 202).

The intervener with the status of joint co-litigant may file extraordinary legal remedy also in the litigation in which he/she did not participate as an intervener before the decision on the statement of claims becomes final and enforceable.

APPOINTMENT OF PREDECESSOR

Article 209

The person who has been sued as a proprietor of an object or user of a right, who claims that he/she holds the object or exercises the right on behalf of a third party may at the preliminary hearing at the latest or if preliminary hearing has not been held then at the main hearing, before

presenting arguments on the main subject matter, invite that third party (predecessor) through the court to enter the litigation as a party.

Consent of the plaintiff on entering of the predecessor in the litigation instead of defendant is required only when the plaintiff sets against the defendant such claims that do not depend on whether the defendant has the object or exercises the right on behalf of the predecessor or not.

If the predecessor who has been duly summoned fails to appear at the hearing or refuses to enter the litigation, the defendant may not refuse to enter the litigation.

NOTIFYING THE THIRD PARTY ON LITIGATION PROCEDURE

Article 210

If the defendant or the plaintiff need to notify the third party about the initiated procedure in order to create a certain civil law effect, they can do it at any time before the decision in the procedure becomes final and enforceable by a pleading submitted through the civil court in which they will indicate the reason for notification and describe the state of the litigation.

The party who has notified the third party on the litigation may not, due to that reason, request the stay of the procedure that has been initiated, prolongation of the deadlines or postponement of the hearing.

TITLE EIGHTEEN

STAY AND SUSPENSION OF PROCEDURE

Article 211

The procedure shall be stayed if:

1) the party dies;

2) the party loses litigation capacity while having no agent in that litigation;

3) legal representative of the party dies or his/her authorisation of representation ceases to be valid, while the party has no agent in that litigation;

4) the party who is a legal person ceases to exist or when the competent authority validly decides on prohibition of business practice;

5) the motion for initiation of bankruptcy procedure is filed in disputes where the defendant is a bankruptcy debtor;

6) the court ceases to function due to war or other causes;

7) it is so prescribed by another law.

Article 212

In addition to the cases explicitly prescribed by this Law, the court shall determine the stay of procedure if:

1) it has decided not to resolve a preliminary matter on its own (Article 14);

2) the party is located in the region from which the court is not accessible due to emergency conditions (flood and the like).

The court may order a stay of the procedure if the decision on the statement of claims depends on whether a criminal or commercial offence prosecutable *ex officio* has been committed, if it depends on who the offender is and if he/she is responsible and particularly if there is a doubt that the witness or expert witness has given false testimony or if the document used as evidence is false.

Article 213

All deadlines set for commencing litigation actions shall be terminated during the stay of the procedure.

During the stay of the procedure, the court may not take any actions in the procedure, but if the stay has occurred after the completion of the main hearing the court may render decision on the grounds of that hearing.

Litigation actions taken by one party during the stay of procedure shall not have legal effect on the other party. Their effect shall start only after the procedure has been resumed.

Article 214

The procedure stayed due to reasons stated in Article 211, paragraphs 1 through 4 of this Law shall resume when an heir or a trustee of hereditary property, new legal representative, legal successors of a legal person take over the procedure or when the court, at the motion of the adverse party, invites them to do so.

The procedure stayed for the reason specified in article 211, item 5 of this Law shall continue when the bankruptcy court lifts moratorium.

If the court has stayed the procedure due to the reasons stated in Article 212, paragraph 1, item 1 and paragraph 2 of this Law the procedure shall resume when it is validly concluded before the court or other competent authority or when the court establishes that the reasons for waiting its conclusion cease to exist.

In all other cases the stayed procedure shall resume at the motion of the party as soon as the reasons for the stay cease to exist.

Deadlines that have ceased to run due to the stay of procedure shall start to run anew for the party concerned from the day when the court delivers the ruling on resumption of the procedure to that party.

Delivery of ruling on resumption of the procedure to the party who did not file the motion for resumption of the procedure shall be conducted in accordance with provisions of Article 136 of this Law.

Article 215

Appeal against the ruling that determines (Article 211) or orders (Article 212) the stay of procedure shall not suspend enforcement of the ruling.

If at the hearing the court denies the motion to stay the procedure and decides to immediately continue the procedure, interlocutory appeal against such ruling shall not be allowed.

Article 216

The procedure shall be suspended if the party dies or ceases to exist, if in the dispute it is decided on the rights that are not assigned to his/her heirs or legal successors.

In the cases referred to in paragraph 1 of this Article, the ruling on suspension of the procedure shall be delivered to the adverse party, heirs or legal successors of the party after they have been identified.

At the request of the adverse party or *ex officio,* the court shall appoint temporary representative to the heirs of deceased party to whom it will deliver the ruling on suspension of the procedure if it establishes that the probate procedure might last longer.

Ruling on suspension of the procedure that has been rendered due to the fact that legal person ceased to exist shall be delivered to the adverse party and legal successor of the legal person if it exits.

Provisions on suspension of the procedure shall accordingly apply to time limits for commencement of certain actions until the ruling on suspension of the procedure becomes final and enforceable.

TITLE NINETEEN

EVIDENCE AND PRESENTATION OF EVIDENCE

GENERAL PROVISIONS

Article 217

Each party shall present facts and propose evidence which serve as a basis for his/her claim or which serve to contest statements and evidence of the adverse party.

Presentation of evidence includes all facts that are important for rendering the decision.

The court shall determine which evidence will be presented for the purpose of establishing relevant facts.

Article 218

Generally known facts and facts known to the court in performance of its function need not be proved.

Facts admitted by the party during litigation need not be proved, but the court may order that these facts also be proved if it finds that the parties by admitting them tend to dispose of claims of which they cannot dispose (Article 4 paragraph 3).

Taking into consideration all the circumstances, the court shall establish whether the fact that was first admitted and later entirely or partially denied by the party shall be considered as admitted or contested and whether it restricted confession by adding other facts.

Facts presumed under the law need not be proved, however non-existence of these facts may be subject to proving, unless otherwise prescribed by law.

Article 219

If the court, based on presented evidence (Article 9), may not determine a fact with certainty, it shall decide on the existence of that fact by applying rules on the burden of proof.

The party that claims a right bears the burden of proof of the fact which is relevant for its qualification or exercise, unless otherwise prescribed by law.

The party that contests existence of a right bears the burden of proof of the fact which has prevented its qualification or exercise or during which it has ceased to exist, unless otherwise prescribed by law.

Article 220

If it is established that a party is entitled to the compensation of damages, monetary sum or things that are replaceable, but the amount of money or the quantity of things may not be precisely determined or might be determined only with disproportionate difficulties, the court shall decide on the matter according to its own evaluation.

Article 221

Evidence shall be presented at the main hearing.

The court may decide that certain pieces of evidence be presented before another court (requested court). In such case, the record of the presented evidence shall be read at the main hearing.

When the court decides that a piece of evidence be presented before the requested court, the request for presentation of evidence shall describe status of the matter according to the information from the case files with particular emphasis on circumstances which require special attention during the presentation of evidence.

Parties shall be informed about the hearing for presentation of evidence before the requested court.

During the presentation of evidence the requested court shall have the same powers as the requesting court during the presentation of evidence at the main hearing.

Interlocutory appeal against the court ruling which entrusts the hearing of evidence to the requested court shall not be allowed.

Article 222

If, due to circumstances, it may be assumed that presentation of evidence will not be possible within reasonable time frame or if the evidence is to be presented abroad the court shall determine by its ruling on the presentation of evidence the deadline for the presentation of evidence.

After the set deadline has expired the hearing shall be conducted regardless of the fact that the evidence has not been presented.

ON-THE-SPOT INVESTIGATION

Article 223

On-the-spot investigation shall be conducted when the direct observation of the court is required for the determination of a fact or clarification of a circumstance.

On-the-spot investigation may be conducted with the participation of expert witnesses.

Article 224

If the object that needs to be investigated may not be brought before the court or its bringing would incur significant costs the court shall conduct on-the-spot investigation and take down the record thereon.

Article 225

If the object kept by one of the parties or the third party is to be investigated, provisions of this Law on obtaining documents from parties or third parties shall accordingly apply.

DOCUMENTS

Article 226

A document issued in the prescribed form by a public authority within the limits of its competence and the document issued in that form by an enterprise or another organisation in the exercise of its public power prescribed by law (public document) shall be considered to prove authenticity of what is confirmed or determined by it.

The same evidential value shall be granted to other documents that have under special regulations been granted the same status as public documents in terms of evidential value.

It shall be allowed to prove that the facts in the public document have been falsely established or that the document has been issued irregularly.

Should the authenticity of the document be brought in question by the court, it may request from the authority from which it originates to make a statement in that regard.

Article 227

Unless otherwise prescribed by international treaty, foreign public documents that have been duly certified and also meet the condition of reciprocity shall have the same evidential value as domestic public documents.

Article 228

The party shall submit by himself/herself the document proposed as evidence in support of his/her statements.

The document composed in a foreign language shall be submitted with a certified translation by a permanent court translator.

If the document is in the possession of a public authority or a legal person exercising public power and the very party may not have the document either submitted or presented the court shall, at the request of the party, obtain such document.

Article 229

When one party proposes the document and claims it is in the possession of another party, the court shall order that party to submit the document within a set deadline.

The party may not refuse to submit the document if he/she had proposed that document as the evidence corroborating his/her statements in the litigation or if his/her obligation to submit or present the document in question is prescribed by law or if the document, according to its content, is considered to be common for both parties.

With respect to the right of the party to refuse to submit other documents, provisions of Articles 233 and 234 of this Law shall apply accordingly.

When the party that is requested to submit the document denies possession of the document, the court may hear evidence in order to determine that fact.

Taking into consideration all the circumstances, the court shall on the basis of its own evaluation determine relevance of the party's refusal to act upon the ruling of the court which requires submission of the document or his/her denial of possession of the document despite contrary opinion of the court.

Interlocutory appeal against court decision referred to in paragraph 1 of this Article shall not be allowed.

Article 230

At the request of the party, the court may order the third party to present the document that serves as proof to determine a relevant fact. The third party may deny presentation of the document under provisions of Articles 233 and 234 of this Law.

Before issuance of the decision as to which third party is required to bring the document, the court shall invite the third party to make statement on the matter.

If the third party denies his/her obligation to present the document in his/her possession the court shall decide whether the third party is obliged to present the document.

If the third party denies possession of the document the court may decide to hear the evidence in order to establish that fact.

Final and enforceable ruling on obligation of the third party to present the document may be enforced through the competent court according to the enforcement procedure rules.

The third party shall be entitled to reimbursement of costs incurred as a result of the presentation of documents. Provisions of Article 242 of this Law shall apply accordingly in such case.

WITNESSES

Article 231

Any person summoned as a witness shall respond to the summons and, unless otherwise prescribed by this Law, he/she shall testify.

Only persons capable of giving information about the facts that are being proved may be interrogated as witnesses.

A child may be heard as a witness if the court on the basis of the opinion of a competent authority or expert finds that he/she is capable of testifying.

Article 232

If the person, by giving testimony, would breach his/her duty to keep an official, state or military secret he/she may not be heard as witness until the competent authority discharges him/her from that duty.

Article 233

Witness may refuse to testify on:

1) what has been divulged to him/her by a party, in his/her capacity of agent of the party;

2) what has been confessed to him/her by the party or another person, in his/her capacity of a religious confessor;

3) facts learnt by the witness in his/her capacity of an attorney at law or doctor or during the exercise of some other occupation or some other business if there is an obligation to keep as secret the matters learnt in the exercise of that occupation or business.

The court shall instruct those persons that they may refuse to testify.

Article 234

Witness may refuse to answer particular questions if there are justified reasons and particularly if such answer would cause severe disgrace, considerable property damage or criminal prosecution to him/her, his/her blood relatives in the direct line up to any degree and in the lateral line up to and including the third degree, his/her marital or non-marital partner or in-laws up to and including the second degree even if the marriage has ended, as well as his/her guardian or person under guardianship, adoptive parent or adopted child.

The court shall inform the witness that he/she may refuse to answer the question that has been put.

Article 235

The witness may not refuse to testify, on the basis of potential property damage, on legal actions to which he/she was present as invited witness, on actions which he/she had undertaken in respect to the dispute as legal predecessor or representative of one of the parties, on the facts related to the property relations conditioned by family or marriage relations, on the facts that are related to birth, marriage or death or when he/she is bound under special regulations to report or make a statement.

Article 236

Justifiability of reasons for refusing to testify or answer certain questions shall be evaluated by the court before which the witness is to testify. Where necessary, the parties shall be previously heard thereof.

Parties shall not be entitled to file interlocutory appeal against the ruling referred to in paragraph 1 of this Article, while the witness may contest the ruling in an appeal against the ruling on the fine or imprisonment he/she was imposed because of his/her denying to testify or give the requested answer (Article 181, paragraph 2).

Article 237

The party proposing a certain person to be heard as witness shall in advance state the subject of that person’s testimony, his/her name, surname and the place of temporary residence.

Article 238

Witnesses shall be summoned by delivery of written summons which indicate the name and surname, occupation of the summoned, time and place of the hearing, the note on the case for which he/she is summoned and an indication that he/she is summoned in the capacity of a witness. The summons shall contain warning of the witness in terms of the consequences of his/her unjustified absence (Article 181) and his/her right to the reimbursement of costs (Article 242).

Juvenile who has not turned 16 years of age shall be summoned as a witness through parents or legal representatives.

Witnesses who may not respond to the summons due to their age, illness or serious physical disabilities may be heard in their dwelling or premises in which they reside.

Article 239

Witnesses shall be heard individually without presence of those witnesses who shall be heard afterwards. Witness shall answer verbally.

The witness shall first be informed about the obligation to speak the truth and not to withhold anything and thereupon he/she shall be warned of the consequences of giving a false testimony.

The witness shall then be asked about his/her name and surname, father's name, occupation, place of temporary residence, place of birth, age and his/her relation with the parties.

Article 240

Following general questions, witness shall be examined to present everything about facts he/she is to testify about and then he/she may be asked questions for the purpose of verification, supplementation or clarification. It is not allowed to pose the question formulated in such way to already contain the desired response.

The witness shall always be asked how he/she has learnt the facts he/she is testifying about.

Witnesses may be confronted with each other if relevant facts from their statements are in conflict. Confronted witnesses shall be heard one by one about each fact on which they do not agree and their response shall be included in the record.

Article 241

The witness who does not speak the language in which the procedure is conducted shall be interrogated with assistance of interpreter.

If the witness is deaf, the questions shall be put in writing and if he/she is dumb, he/she shall be required to answer in writing. If the hearing cannot be conducted in this manner, a person that can communicate with the witness shall be invited to act as interpreter.

The court shall warn interpreter of his/her duty of accurate interpretation of the questions addressed to the witness as well as the statements given by the witness.

Article 242

The witness shall be entitled to the reimbursement of travel costs, costs for food and overnight stay as well as the compensation of the loss of earnings.

The witness should request reimbursement and where applicable the compensation for the loss of earning immediately after the hearing, otherwise he/she shall lose this right. The court shall inform the witness thereof.

In the ruling on determining the costs of witness the court shall determine that the set amount be paid from the deposited advance payment and if the advance payment has not been deposited the party shall be ordered to pay certain amount to the witness within eight days. Appeal against such ruling shall not suspend enforcement of the ruling.

EXPERT WITNESSES

Article 243

The court may decide to hear expert witnesses when the expertise which the court does not have is necessary for establishment or clarification of a fact.

Article 244

The party proposing expert evaluation shall indicate the subject and scope of expert evaluation in the proposal and shall also propose the person from the list of certified expert witnesses who shall provide expert evaluation.

The adverse party shall make statement on the proposed expert witness.

If the parties fail to reach agreement on the person to be appointed as the expert witness and on the subject and scope of the expert evaluation, the court shall make decision thereon.

Regardless of the agreement between parties the court may designate other expert if it finds the examination a complex one.

Article 245

One expert witness shall perform expert evaluation, but if the court finds the examination a complex one it can designate more expert witnesses.

Expert witnesses shall predominantly be appointed from among certified court experts for a specific type of expert evaluation.

More complex expert evaluation may also be entrusted with professional institutions (hospital, chemical laboratory, university and the like).

If there are institutions specialised in specific types of expert evaluation (expert evaluation of counterfeit money, handwriting, typewriting and the like) such expert evaluations shall predominantly be entrusted with these institutions.

Article 246

Expert witnesses shall respond to the court summons and state their findings and opinion.

The court shall exempt expert witness from the duty of providing expert evaluation, at his/her request, for reasons for which a witness may refuse to testify or give answer to a specific question.

The court may also exempt expert witness from the duty of providing expert evaluation, at his/her request, for other justified reasons. Exemption from the duty of expert evaluation may also be requested by an authorised employee of the authority or organisation where the expert witness is employed.

Article 247

Expert witness may be exempted for the same reasons for which the judge may be exempted, but exceptionally a person who has already testified as witness may be taken as expert witness.

The party may file the request for exemption of expert witness as soon as he/she learns that there is a reason for exemption and at the latest before the beginning of presentation of evidence in expert evaluation.

The party shall indicate in his/her request for exemption the circumstances on which he/she grounds the request for exemption.

The court shall decide on the request for exemption.

Appeal against the ruling on approval of exemption of the expert witness shall not be allowed and interlocutory appeal against the ruling on rejection of the exemption of expert witness shall not be allowed.

If the party has learned about the reason for exemption after the performance of expert evaluation and objects expert evaluation for that reason, the court shall act as if the request for exemption has been filed prior to the expert evaluation.

Article 248

Expert witness shall be entitled to the reimbursement of travel costs, costs for food and overnight stay, compensation of the loss of earning and costs of expert evaluation as well as the right to remuneration for conducted expert evaluation.

Provisions of Article 242, paragraphs 2 and 3 of this Law shall apply accordingly to the reimbursement of costs and remuneration of witness expert.

Article 249

The court shall, by a ruling, decide to hear expert evaluation which contains the following: the name, surname and occupation of expert witness, disputed matter, scope and subject of expert evaluation and deadlines for filing the findings and opinion in writing.

Article 250

Expert witness shall be always summoned to the deliberation for the main hearing.

Transcript of the ruling referred to in Article 249 of this Law shall be delivered to the expert witness, together with the summons for the main hearing.

In the summons, the court shall advise the expert witness that he/she shall present his/her opinion conscientiously and in accordance with the rules of science and profession and warn him/her of consequences of the failure to deliver findings and opinion within the set deadline or unjustified absence from the hearing, as well as of the right to the remuneration and reimbursement of costs.

Article 251

Unless the court determines otherwise, the expert witness shall always submit to the court his/her written findings and opinion before the hearing.

The expert witness shall always elaborate his/her opinion.

Article 252

If the expert witness fails to deliver findings and opinion within the set deadline the court shall designate another expert witness after expiry of the deadline left to the parties to state their opinion on this matter in writing.

If the expert witness submits findings or opinion which are unclear, incomplete or contradictory to themselves or to other presented evidence, the court shall invite the expert witness to supplement or correct them and set the deadline for re-submission of findings and opinion.

If the expert witness fails to submit complete and understandable findings and opinion even upon the court invitation the court shall after having heard opinion of the parties designate another expert witness.

Article 253

The court shall deliver expert witness findings and opinion to the parties in writing at least eight days before deliberation for the main hearing.

Article 254

Deliberation for the main hearing shall be held even if the expert witness fails to appear at the hearing.

Exceptionally from paragraph 1 of this Article, should the court find presence of the expert witness at the hearing essential for the clarification or supplementation of his/her findings and opinion it may, on proposal of the party, postpone the hearing and schedule a new one to which the expert shall be re-summoned.

Article 255

The court shall allow the expert witness to examine case files as well as to interrogate parties and other participants with regard to the subject of expert evaluation.

Article 256

If several expert witnesses are designated to testify they may submit their shared findings and opinions if they agree in the findings and opinions.

If findings and opinions of expert witnesses are not in agreement each expert shall submit his/her own report separately.

If the expert opinions substantially differ or if their finding is unclear, incomplete and in contradiction with themselves or with the adduced circumstances and those faults cannot be removed by repeated hearing of the expert witnesses, the expert evaluation shall be repeated by the same or other experts.

If contradictions or faults are found in the opinion of several expert witnesses or a reasonable suspicion in the regularity of the given opinion arises and the suspicion and faults cannot be removed by repeated hearing of the expert witnesses, opinions of other expert witnesses shall be sought.

Article 257

Appeal against the court ruling under Articles 249 and 252 of this Law shall not be allowed.

Article 258

Provisions on the hearing of witnesses shall apply accordingly to hearing of the expert witnesses unless provisions of this Law prescribe otherwise.

Article 259

Provisions on expert evaluation shall accordingly apply to interpreters.

HEARING THE PARTIES

Article 260

On proposal of the party, the court may order the presentation of evidence by hearing the parties.

Article 261

If the court is assured that the party or the person who is to be heard as the party is not acquainted with disputed facts or if the hearing of that party is not possible it may decide to hear the other party only.

The court shall decide that only one party is to be heard even if the other party refuses to give testimony or does not respond to court summons.

Article 262

The legal representative shall be heard for the party without litigation capacity. Where possible, the court may decide that instead of or in addition to the legal representative the party also is heard.

The person appointed for representation of the legal person under law or general act shall be heard on behalf of that legal person.

If several persons take part as one party to the dispute the court shall decide whether to hear all of them or only some of them.

Article 263

Summons to the hearing shall be delivered to the agent of the party who shall communicate it to the party or if the party does not have the agent it shall be delivered to the party personally or to the person who shall be heard on behalf of the party.

Summons shall indicate that the evidence shall be presented by interrogating parties at the hearing and that the party present at the hearing shall be heard regardless the absence of the other party.

Article 264

Coercive measures may not be applied against the party who fails to respond to the court summons for the hearing, nor may the party be forced to give testimony.

Article 265

Provisions on the presentation of evidence by hearing witnesses shall also apply to the presentation of evidence by hearing the parties, unless otherwise prescribed for the hearing the parties.

TITLE TWENTY

PROVISION OF EVIDENCE

Article 266

In case of justified belief that a piece of evidence will not be available for presentation or that its later presentation may be hindered it may be proposed that such evidence be presented in the course of and prior to instituting the litigation.

Provision of evidence may also be requested prior to or in the course of the procedure for reopening instituted upon motion.

Article 267

If the motion for the provision of evidence has been filed in the course of civil procedure, the court conducting this procedure shall be competent to act.

When the provision of evidence is required before initiation of the procedure, as well as in emergency cases if the litigation procedure is already underway, the competent court shall be the first instance court on whose territory objects to be examined or persons to be interrogated are located.

Article 268

In the pleading on request for the provision of evidence, the applicant shall indicate facts to be proved, evidence to be presented and reasons for believing that the later presentation of evidence will not be possible or that the presentation shall be hindered. Name and surname of the adverse party shall be given in the pleading unless, under the circumstances, it may be concluded that he/she is unknown.

Article 269

The pleading containing motion for the provision of evidence shall be delivered to the adverse party if he/she is known. If there is a danger of delay the court shall decide on the motion without having previously requested the adverse party to make statement.

In the ruling on acceptance of the motion, the court shall schedule the hearing for the provision of evidence, indicate facts in relation to which the evidence shall be presented and shall also indicate the evidence to be presented.

If the pleading containing motion for the provision of evidence has not been previously delivered to the adverse party, it shall be delivered together with the court ruling on acceptance of the motion for the provision of evidence.

The court may appoint temporary representative for the adverse party who is unknown or whose place of temporary residence is not known for the purpose of his/her participating at the hearing for the presentation of evidence (Article 82). This appointment need not be announced.

In emergency cases the court may decide to start hearing the evidence before the ruling on acceptance of the motion for the provision of evidence has been delivered to the adverse party.

Appeal against the court ruling on acceptance of the motion for the provision of evidence or appeal against the ruling to start hearing the evidence prior to having delivered ruling to the adverse party shall not be allowed.

Article 270

In case the evidence has been presented before the procedure has been initiated the record on the presentation of evidence shall be kept at the court where they were presented.

If the procedure is underway and the court conducting the procedure did not conduct the procedure for the provision of evidence, the record shall be forwarded to that court.

TITLE TWENTY ONE

PREPARATION FOR THE MAIN HEARING

GENERAL PROVISIONS

Article 271

The court shall start preparations for the main hearing immediately upon receipt of the complaint.

These preparations shall include initial examination of the complaint, delivery of the complaint to the defendant for mandatory response, holding preliminary hearing and scheduling the main hearing.

During the preparation for the main hearing, the parties may submit pleadings in which they indicate facts and evidence whose presentation they intend to propose.

Article 272

During the preparation for the main hearing, before the main hearing is held, the court is authorised to decide on:

1) predecessor’s entry into the dispute;

2) participation of intervener;

3) provision of evidence;

4) alteration of complaint;

5) withdrawal of complaint;

6) stay of the procedure;

7) temporary security measures;

8) merging and separating cases;

9) setting the court’s deadlines and their extension;

10) scheduling and postponement of hearings;

11) return to the previous stage;

12) exemption of the party from paying the costs of the procedure;

13) provision of litigation costs;

14) depositing an amount to bear costs of certain litigation actions;

15) appointing expert witness;

16) appointing temporary representative;

17) delivery of court writs;

18) measures for the correction of pleadings;

19) validity of authorisations and

20) all matters related to conducting the procedure.

Appeal against decisions made in preparation for the main hearing which are related to conducting the procedure shall not be allowed.

Article 273

In the course of preparations for the main hearing the court may render judgment on the basis of confession, judgment on the basis of waiver and default judgment and register settlement of the parties in the record.

PRELIMINARY EXAMINATION OF THE COMPLAINT

Article 274

After the preliminary examination of the complaint the court renders rulings under Article 272 of this Law, unless it is about matters that by nature or by provisions of this Law may be decided only in the further procedure.

Article 275

If the court finds that the complaint is either incomprehensible or incomplete or that there are defects concerning capacity of the plaintiff or defendant to act as a party to the procedure or defects concerning legal representation of the party or defects concerning authorisation of the representative to institute litigation when such authorisation is needed, it shall take necessary actions prescribed by this Law in order to remedy defects.

Article 276

After the preliminary examination of the complaint the court shall render ruling on rejection of the complaint if it finds that:

1) adjudication of the statement of claims does not fall within the competence of the court;

2) parties have agreed upon arbitration;

3) the complaint has not been filed within the prescribed deadline if special regulations prescribe deadline for filing such complaint;

4) litigation concerning the same claim is underway;

5) final and enforceable judgment has been rendered on the subject matter;

6) judicial settlement has been reached on the disputed matter, the plaintiff has waived his/her statement of claims before the court, there is no legal interest of the plaintiff for filing the complaint for determination and the plaintiff failed to remedy defects referred to in Article 81 and 106 of this Law within the required deadlines set by the court.

The court shall render ruling to declare that it is not competent and shall forward the case to a different court if it finds that it does not either have territorial or subject matter jurisdiction to adjudicate the case.

Article 277

If the court finds that there is insufficient information to render decision on the matter raised in the course of the preliminary examination of the complaint it shall decide on that matter when it receives the response to the complaint or at the preliminary hearing, or at the deliberation for the main hearing if the preliminary hearing has not been held.

RESPONSE TO THE COMPLAINT

Article 278

The complaint with attachments thereto shall be delivered to the defendant for response within 30 days after the day of receipt of a correct and complete complaint by the court.

Article 279

After receipt of the complaint with attachments thereto the defendant shall provide written response to the complaint to the court within 30 days.

When serving the defendant with the complaint, the court shall inform the defendant about his/her obligation referred to in paragraph 1 of this Article, required contents of the response to the complaint and consequences of not responding to the complaint within the set deadline.

Article 280

In response to the complaint, the defendant shall state possible procedural objections and make statement as to whether he/she accepts or contests the claim put forth in the complaint and indicate all other information that every written pleading shall contain (Article 103).

If the statement of claims is contested by the defendant, response to the complaint shall also contain facts on which his/her position is grounded and evidence corroborating those facts.

Article 281

When the court finds that response to the complaint is incomprehensible or incomplete it shall proceed in accordance with Article106 of this Law in order to remedy defects.

Article 282

If, after receipt of response to the complaint, the court finds that there are no disputable facts between the parties and that there are no any other obstacles for rendering decision it may render decision on the dispute without scheduling the hearing.

Article 283

If the court, upon receipt of the response to the complaint, finds that the facts stated in the complaint do not constitute basis for the statement of claims it shall render decision by which it shall dismiss the statement of claims.

Within the meaning of paragraph 1 of this Article, the statement of claims is not grounded if it is evidently in contravention with the facts stated in the complaint or if the facts on which the statement of claims is grounded are evidently in contravention with the evidence proposed by the plaintiff himself/herself or with the facts which are commonly known.

PRELIMINARY HEARING

Article 284

The court shall schedule preliminary hearing after receipt of response to the complaint.

If the defendant failed to deliver response to the complaint and there are no grounds for rendering default judgment the court shall schedule preliminary hearing after expiry of the deadline set for filing response to the complaint.

As a rule, the preliminary hearing shall be held within 30 days after delivery of the written response to the complaint by the defendant.

Article 285

Preliminary hearing is mandatory except in cases where the court, after having received the complaint and response to the complaint, determines that there are no disputable facts between the parties (Article 282) or when the preliminary hearing is unnecessary due to the simplicity of the case.

Article 286

In the summons for the preliminary hearing, the court shall inform the parties about consequences should they fail to appear at the preliminary hearing and that they are obliged at the preliminary hearing at the latest to present all facts on which their claims are based and propose all the evidence that they want to present in the course of procedure and shall also inform them about their obligation to bring to the hearing all the documents and items they want to use as evidence.

Summons to the preliminary hearing shall be delivered to the parties at the latest eight days before the hearing.

Article 287

Preliminary hearing shall start with a brief presentation of the complaint by the plaintiff to be followed by brief response to the complaint by the defendant.

When required, the court shall demand from parties to clarify their statements and proposals.

Article 288

Matters related to any obstacles to further course of the procedure shall be heard after the presentation of the complaint and response to the complaint. Evidence related to these matters may be presented at the preliminary hearing when necessary.

Upon objection of the party or *ex officio* the court shall decide on matters referred to in Article 276 of this Law unless otherwise prescribed by provisions of this Law.

If the court does not accept objection regarding existence of an obstacle for further course of the procedure, the decision on the objection shall be rendered at the same time as the decision on the main subject matter, except if the objection refers to territorial jurisdiction.

Interlocutory appeal against the decision referred to in paragraph 3 of this Article shall not be allowed.

Article 289

In the further course of the preliminary hearing, the proposals by parties and statement of facts on which proposals of the parties have been grounded are discussed.

Article 290

On the basis of the results of deliberations at the preliminary hearing the court shall decide on the matters to be discussed and the evidence to be presented at the main hearing.

The court shall reject motions which it does not hold necessary for rendering the decision and state the reasons for the rejection in the ruling.

Interlocutory appeal against the ruling referred to in paragraph 2 of this Article shall not be allowed.

In the further course of the procedure, the court shall not be bound by its previous rulings referred to in this Article.

Article 291

If the court, on motion of the party, orders hearing of the expert witness and delivery of expert findings and opinion, it shall set the deadline for the expert witness to do so.

When setting this deadline the court shall take into consideration that the expert witness` written findings and opinion shall be delivered to the parties no later than eight days before the main hearing.

Article 292

If there are several ongoing litigations before the same court involving the same parties or involving one person as the adverse party of different plaintiffs or different defendants the court may by the ruling merge all litigations for joint deliberation if that would contribute to a speedier deliberation or to a decrease of the costs. All merged cases shall be decided by a single judgment.

The court may determine that certain claims from the same complaint be deliberated separately and upon completion of separate deliberation it shall render separate decisions on those claims.

As a rule, the rulings referred to in paragraphs 1 and 2 of this Article may be rendered at the preliminary hearing at the latest or by the beginning of the main hearing if the preliminary hearing has not been held.

Interlocutory appeal against these rulings shall not be allowed.

Article 293

Complaint shall be considered withdrawn if the plaintiff who has been duly summoned fails to appear at the preliminary hearing unless the defendant requests the hearing to be held.

If duly summoned defendant fails to appear at the preliminary hearing the deliberation shall be held with the plaintiff.

Article 294

Authorisations of the court at the preliminary hearing regarding management of the procedure shall be the same as at the main hearing.

SCHEDULING THE MAIN HEARING

Article 295

At the preliminary hearing, the court ruling shall determine the following: date and hour of the main hearing, matters to be deliberated, evidence to be presented by each of the parties and persons to be summoned to the main hearing.

As a rule, the main hearing shall be held within 60 days after the preliminary hearing at the latest.

The court may also order the main hearing to be held immediately after the preliminary hearing.

If the court finds that the main hearing will last more than one day the deliberation shall be scheduled for the number of consecutive days necessary to finalise the hearing in continuation.

Article 296

Parties present at the preliminary hearing shall be informed about content of the ruling referred to in Article 295, paragraph 1 of this Law and the ruling and summons for the main hearing shall not be delivered to them.

The court shall also warn parties of the consequences of their failure to appear at the main hearing.

Article 297

Parties that were not present at the preliminary hearing and witnesses and expert witnesses whom the court decided to summon at the preliminary hearing shall be summoned by the court to the deliberation for the main hearing.

In the summons for the main hearing, the court shall warn the invited parties of the consequences of their failure to appear at the hearing.

Certified transcript of the record shall be delivered to the party who was absent from the preliminary hearing together with the summons for the main hearing.

TITLE TWENTY TWO

MAIN HEARING

COURSE OF THE MAIN HEARING

Article 298

The judge shall open the main hearing and announce subject of the deliberation.

After that the judge shall verify whether all the summoned persons have appeared and in case of absence the judge shall verify whether the absent persons have been duly summoned and whether they have justified reason to be absent.

If duly summoned plaintiff fails to appear without justified reason at the deliberation for the main hearing it shall be considered that he/she has withdrawn the complaint unless the defendant presents arguments at such a hearing.

If duly summoned defendant fails to appear at the deliberation for the main hearing the hearing shall be held without his/her presence.

Article 299

Upon objection of the party or *ex officio*, the court shall first determine if there are procedural obstacles for further procedure and proceed in accordance with Article 276 of this Law unless otherwise prescribed by provisions of this Law.

If the court does not accept objection referred to in paragraph 1 of this Article, the ruling on the objection shall be rendered together with the ruling on the main subject matter regardless of whether it was discussed separately or together with the main subject matter.

Interlocutory appeal against the decision on rejecting objection of the party referred to in paragraph 1 of this Article shall not be allowed.

Article 300

If the preliminary hearing has not been previously held the first deliberation for the main hearing shall start with concise presentation of the complaint followed by concise response of the defendant to the statements contained in the complaint.

In the further course of the procedure the court shall determine by its ruling which evidence shall be presented at the main hearing.

The court shall dismiss the proposed evidence which it does not consider relevant for rendering the decision and shall also indicate in the ruling the reasons for such dismissal.

Interlocutory appeal against the ruling which either orders or dismisses presentation of evidence shall not be allowed.

In the further course of litigation the court is not bound by its previous ruling on the presentation of evidence.

Article 301

If the preliminary hearing has been held, the evidence presented at the main hearing shall be those whose presentation has been ordered by court ruling at that hearing.

Article 302

Procedure at the main hearing shall be oral and the evidence shall be presented directly before the court unless otherwise prescribed by this Law.

Article 303

Parties may present new facts and propose new evidence in the course of the main hearing only if they satisfy the court that, without their fault, they could not have presented or proposed them at the preliminary hearing.

Article 304

The party and his/her representative or agent may, upon approval of the court, pose direct questions to the adverse party, witnesses and expert witnesses.

The court shall prohibit the party to pose a particular question or shall prohibit answering to a particular question if the question implies the answer or if the question is not related to the case.

At the request of the party, the question prohibited by the court shall be registered in the court record, as well as the question to which the answer has been banned.

Article 305

The already heard witnesses and expert witnesses shall stay in the courtroom unless the court after consulting the parties fully dismisses them or orders that they temporarily leave the courtroom.

The court may order that the already heard witnesses be later called again and heard one more time either in presence or absence of other witnesses or expert witnesses.

Article 306

After presentation of all the evidence, parties starting from the plaintiff shall be entitled to address the court with the closing statement which summarises legal and factual aspects of the case. The court may allow the plaintiff to express himself/herself briefly regarding closing statement of the defendant. If the plaintiff is allowed to express himself/herself regarding closing statement of the defendant, then defendant is also entitled to express himself/herself briefly regarding closing statements of the plaintiff.

Article 307

After all the stages of the main hearing have been completed and the case has become ready for rendering the judgment the court shall state that the main hearing has been concluded.

The court may decide to conclude the main hearing even when certain case files containing information necessary for rendering the decision are still to be obtained or if the record on the evidence obtained from the requested judge is awaited, where the parties renounce deliberation on those evidence or the court believes that such deliberation is not necessary.

PUBLICITY OF THE MAIN HEARING

Article 308

The main hearing shall be public.

Only adults may attend the hearing.

Persons attending the hearing shall not carry weapons or dangerous tools.

Paragraph 3 of this Article shall not apply to law enforcement officers who protect persons participating in the procedure.

Article 309

The court may exclude public from the entire main hearing or a part of it if so required in order to preserve the state, official, business or personal secret or to protect interests of public order or morals.

The court may also exclude public when measures for the maintenance of order at the hearing provided by this Law cannot ensure unhindered course of the hearing.

Article 310

Exclusion of public does not apply to the parties, their legal representatives, agents and interveners.

The court may allow certain official persons, scientific and public workers to attend the main hearing that is closed for public if it is relevant for their profession or scientific and public activity.

In case of the exclusion of public, at the request of the party, the court may also allow that two persons at the most determined by the party be present at the main hearing.

The court shall inform persons attending the hearing that is closed for public that they shall keep as confidential the matters relating to the hearing and warn them of the consequences of disclosing such secret.

Article 311

The court shall decide on exclusion of public by a ruling that shall be explained and made available to the public.

Interlocutory appeal against the ruling on the exclusion of public shall not be allowed.

Article 312

Provisions pertaining to publicity at the main hearing shall apply accordingly to the preliminary hearing, deliberations outside the main hearing and deliberation before the requested judge.

CONDUCTING THE MAIN HEARING

Article 313

The court shall conduct the main hearing, interrogate parties, present evidence, give parties, their legal representatives and agents permission to speak.

The court shall ensure that the main hearing is conducted on the right track and in proper manner without any unnecessary delays.

The court shall maintain order and dignity of the court during the main hearing.

The court is not bound by its ruling related to conducting the procedure.

Interlocutory appeal against the ruling related to conducting the procedure shall not be allowed.

Article 314

The court renders decisions on the matters referred to in Article 272 and decisions referred to in Article 273 of this Law outside deliberation for the main hearing.

Article 315

The court may postpone a scheduled deliberation for the main hearing before it is held if it finds that the legal requirements for its holding have not been met or that evidence that need to be presented will not have been obtained for the main hearing.

No later than eight days before holding of the deliberation the court shall check whether the conditions referred to in paragraph 1 of this Article have been met.

When it postpones the deliberation the court shall immediately notify all summoned parties about the date of new deliberation.

Article 316

On motion of the party, the court may postpone deliberation that has already begun only for the following reasons:

1) if through no fault of the party who proposes postponement of the deliberation it is not possible to present a piece of evidence whose presentation has been decided and which is relevant for rendering correct decision;

2) if both parties propose postponement in order to attempt to reach an amicable alternative dispute resolution.

The party may request postponement for the same reason only once.

When deliberation is postponed the court shall immediately notify parties of the place and time of new deliberation. The court is not obliged to notify the party who is not present at the postponed deliberation although duly summoned about the place and time of new deliberation unless the adverse party has presented new facts or proposed new evidence (Article 303).

Article 317

If at the court deliberation it is not possible to present a piece of evidence whose presentation was decided the court shall decide to hold deliberation if the other evidence may be presented and to have that specific piece of evidence presented subsequently at a new deliberation.

Article 318

Actions that have already been conducted shall be repeated at the new court deliberation that was scheduled after postponement of the hearing only if the court finds it necessary for rendering the correct judgment.

Article 319

Deliberation for the main hearing may not be postponed for an indefinite period of time.

Deliberation for the main hearing may not be postponed for the period longer than 30 days except under Article 222 and Article 329, paragraph 2 of this Law.

When it postpones deliberation the court shall take all available actions before the next deliberation commences in order to remove obstacles that led to the postponement so that the hearing may be finalised at that new deliberation.

Appeal against the court ruling on postponement of the deliberation or the ruling on refusal of the motion of the parties to postpone the main hearing shall not be allowed.

Article 320

If an initiated deliberation cannot be finalised during the same day the court shall order continuance of deliberation for the next working day.

Article 321

If the deliberation is postponed, new deliberation shall be held before the same judge if possible.

If new deliberation is held before the same judge the main hearing shall continue and the judge shall briefly present the course of previous deliberations.

If the deliberation is held before a new judge the main hearing shall start from the beginning, but after the parties make their statements the judge may decide that witnesses and expert witnesses are not heard again and that a new on-the-spot investigation is not conducted, instead he/she may decide to read records on presentation of this evidence.

Exceptionally from paragraph 3 of this Article the judge shall decide to read testimonies of witnesses and expert witnesses who are deceased, who suffer from mental disorder or those who are not available to the court.

TITLE TWENTY THREE

ALTERNATIVE DISPUTE RESOLUTION

JUDICIAL SETTLEMENT

Article 322

At any time during the procedure the parties may settle their dispute (judicial settlement).

Judicial settlement may pertain to the whole statement of claims or to a part thereof.

Judicial settlement before the court may not be concluded with regards to the claims of which the parties may not dispose (Article 4, paragraph 2).

When the court renders ruling which does not allow for settlement between the parties the procedure shall be suspended until the ruling becomes final and enforceable.

Article 323

The court shall throughout entire procedure attempt to have the parties settle the case in a manner which does not compromise its impartiality.

Article 324

As a rule, judicial settlement is concluded before the court of first instance.

If the appeal procedure has been instituted before the court of second instance, the court of first instance shall notify the court of second instance of the concluded judicial settlement.

Judicial settlement may also be concluded before the court of second instance when the main hearing is held before the court of second instance.

If the settlement is concluded after rendering the first instance judgment the court shall reverse that judgment by the ruling.

Article 325

Judicial settlement between parties shall be entered in the record.

Judicial settlement is reached when parties have signed the settlement record after having read the record.

Parties shall be issued a certified transcript of the record on judicial settlement.

Article 326

During the procedure the court of first instance shall *ex officio* have due regard as to whether the litigation concerns disputed matter on which the judicial settlement has been previously reached. If it finds that the litigation concerns the matter on which the judicial settlement has been previously reached it shall dismiss the complaint.

Article 327

Judicial settlement may only be contested by the complaint.

Judicial settlement may be annulled if it has been reached under delusion, duress or deceit.

Judicial settlement may also be annulled if the person who participated in the conclusion of the settlement could not have been a party to the procedure or the party without litigation capacity was not represented by legal representative or if the party was represented by an unauthorised person or a person who did not have necessary authorisation for some litigation actions, unless those actions were subsequently allowed.

Complaint for annulment of the settlement referred to in paragraphs 2 and 3 of this Article may be filed within three months from the day when the reasons for annulment become known, but not longer than three years from the day when judicial settlement was concluded.

The settlement is null and void if it was concluded in respect with the claims which the parties may not dispose of (Article 4, paragraph 3).

Article 328

The person who intends to file complaint may attempt to reach settlement through the court of first instance on whose jurisdiction the adverse party resides.

The court to which such motion has been filed shall invite the adverse party and introduce him/her with the proposed settlement.

The costs of such procedure shall be borne by the proposing party.

MEDIATION

Article 329

If the court finds that the dispute might be successfully resolved by mediation it shall suspend the procedure and refer parties to the mediation procedure.

After the deadline of 60 days has expired and the parties do not resolve the dispute by mediation the court shall schedule deliberation.

Article 330

Mediation shall be prescribed by a separate law.

TITLE TWENTY FOUR

JUDGMENT

Article 331

The court shall render judgment on the claim concerning main subject matter and subsidiary claims.

As a rule, if there are several claims the court shall decide on all those claims by a single judgment.

If several litigations have been merged for joint deliberation and only one litigation has been become mature for rendering the judgment, then judgment on that specific litigation may be rendered.

Article 332

The court may order the defendant to take certain action only if it is due before conclusion of the main hearing.

If the court accepts the request for maintenance, for the compensation of damage in the form of annuity for the loss of earning or other income from work or because of lost maintenance, it may bind the defendant to take actions that are not yet due.

If the action that is subject of the statement of claims is not due until conclusion of the main hearing the court shall dismiss the statement of claims as premature.

Article 333

If the plaintiff has requested in the complaint that a certain object be awarded to him/her and has simultaneously declared in the complaint or before conclusion of the main hearing that he/she is ready to accept a certain amount of money *in lieu of* the object, the court shall, in case it accepts the statement of claims, state in the judgment that the defendant may be released from surrendering the object if he/she pays the specified amount.

Article 334

When the party is ordered by the judgment to perform a certain action, a deadline shall be set for him/her to do so.

Unless otherwise prescribed by special regulations the deadline for performance of the action shall be 15 days, but the court may set longer deadline for performances that do not involve monetary obligations. In disputes concerning bills of exchange and checks this deadline shall be eight days.

Deadline for performance of the action shall start to run from the first day after the transcript of the final and enforceable judgment has been delivered to the party who is ordered to perform the action unless otherwise prescribed by law.

PARTIAL JUDGMENT

Article 335

If out of several claims only some of them are ready for final decision because of confession or on the basis of the hearing or if only a part of one claim is ready for final decision the court may conclude the hearing related to the claims that are ready or to the part of the claim that is ready and render judgment (partial judgment).

The court may render partial judgment when a counter-claim has been filed if only the claim from the complaint or only the claim from the counter-complaint are ready for rendering decision.

When assessing whether to render partial judgment the court shall take into special consideration size of the claim or the part of the claims ready for decision.

In the litigation where the complaint or the counter-claim comprises several claims partial judgment is not allowed if the ground of those claims, due to the nature of the disputed matter, may be decided only by a single judgment.

As far as the legal remedies and enforcement are concerned the partial judgment shall be considered as a separate judgment.

INTERIM JUDGMENT

Article 336

If the defendant has contested both, basis of the statement of claims and amount of the statement of claims and in respect to the basis the subject matter is ready for rendering decision the court may for the reasons of purposefulness first render the judgment only related to the basis of the statement of claims (interim judgment).

The court shall cease deliberations on the amount of the claims until the interim judgment becomes final and enforceable.

JUDGMENT BASED ON CONFESSION

Article 337

If the defendant entirely or partially confesses the statement of claims or part of the statement of claims before conclusion of the main hearing the court shall without further deliberation render judgment accepting the statement of claims in the part related to confession of the statement of claims (judgment based on confession).

The court shall not render judgment based on confession even if the required conditions have been met if it finds that parties may not dispose of the claim (Article 4, paragraph 3).

Rendering the judgment based on confession shall be postponed if there is a need to obtain information about circumstances referred to in paragraph 2 of this Article.

Confession of the statement of claims may be withdrawn by the defendant either at the hearing or in a written pleading without consent of the plaintiff before the judgment has been rendered.

JUDGMENT BASED ON WAIVER

Article 338

Should the plaintiff waive his/her statement of claims or part of the statement of claims before conclusion of the main hearing, the court shall without further deliberation render judgment refusing the statement of claims in the part waived by the plaintiff (judgment based on waiver).

No consent of the defendant is required for waiving statement of claims.

The court shall not render judgment on the basis of waiver even if all required conditions have been met if it finds that parties may not dispose of such claim (Article 4, paragraph 3).

Rendering the judgment based on waiver shall be postponed if it is necessary to previously obtain information related to the circumstances referred to in paragraph 3 of this Article.

Waiver of the statement of claims may be withdrawn by the plaintiff either at the hearing or in a written pleading and without the consent of the defendant before the judgment has been rendered.

DEFAULT JUDGMENT

Article 339

If the defendant fails to respond to the complaint within the deadline prescribed in Article 279, paragraph 1 of this Law the court shall render judgment accepting the statement of claims (default judgment) if the following conditions have been met:

1) if the defendant has been duly served the complaint for response;

2) if those are not the claims that the parties cannot dispose of (Article 4, paragraph 3);

3) if the basis of the statement of claims arises from the facts specified in the complaint;

4) if the facts on which the statement of claims is based are not in contravention with the evidence submitted by the very plaintiff or generally known facts.

Rendering default judgment shall be postponed if it is necessary to previously obtain information on circumstances referred to in paragraph 1 of this Article.

RENDERING, DRAFTING AND DELIVERING THE JUDGMENT

Article 340

The court shall render judgment no later than 30 days after conclusion of the main hearing. The day when the judgment is rendered in writing shall be considered a time of delivery of the judgment.

If the judge exceeds the deadline set in paragraph 1 of this Article he/she shall inform the President of the court in writing about the reasons for such exceeding.

Article 341

After conclusion of the main hearing the court shall inform the present parties of the date when the judgment shall be rendered. If one party was absent from the main hearing the court shall inform him/her in writing about the day when the judgment shall be rendered.

Parties or their representatives or agents shall take over the judgment in the court house.

If parties were duly informed of the date when the judgment was rendered, the deadline for the appeal against the judgment shall start to run from the next day after the judgment has been rendered.

Article 342

At the time of rendering the judgment (Article 340) the court may, at the request of the party, decide to serve the judgment under provisions regarding delivery in this Law if the party is not able take over the judgment (Article 341, paragraph 2).

By all means, the court shall serve the judgment under provisions on delivery in this Law to the party that was not duly informed of the date of rendering the judgment.

Article 343

Default judgment and judgment of the court of the second instance rendered without hearing shall be served to the parties under provisions on delivery in this Law.

Article 344

In the case referred to in Article 340, paragraph 2 of this Law the court shall, as soon as it learns that the day of rendering the judgment will be postponed, notify parties thereof and serve the judgment to parties afterwards under provisions on delivery in this Law.

Article 345

In cases referred to in Articles 342, 343 and 344 of this Law, the deadline for the legal remedy shall start to run from the day after the day of receipt of the judgment.

Article 346

The judge shall sign the original judgment.

Article 347

Written judgment shall contain the following: introduction, operative part, reasoning and instruction regarding the right to the legal remedy against the judgment.

Introduction to the judgment shall contain the following: name of the court, name and surname of the judge, name and surname and permanent or temporary place of residence of parties, their representatives and agents, short description of disputed matter and its value, date of conclusion of the main hearing, note on parties, their representatives and agents attending the hearing and date when the judgment was rendered.

Operative part of the judgment shall contain the following: decision on acceptance or rejection of certain claims pertaining to the main subject matter and subsidiary claims, decision on the existence or non-existence of the claim put forward for the purpose of compensation of debts as well as the decision on litigation costs.

Reasoning shall contain the following: claims of parties, facts they presented and evidence they proposed, which of the facts were subject to determination, why and how it determined them and if it determined them with the evidence then what evidence it presented and how it evaluated them. The court shall particularly indicate which provisions of substantive law it applied in deciding at the request s of parties and if necessary it shall also make the statement as to the legal basis of the dispute, its motions and objections for which it did not produce reasons in decisions it has already rendered in the course of the procedure.

Reasoning for default judgment, judgment based on confession or judgment based on waiver shall indicate only the reasons that justify rendering such judgments.

SUPPLEMENTAL JUDGMENT

Article 348

If the court has failed to decide on all claims or part of the claim that is to be decided by judgment the party may propose to the court to supplement the judgment within 15 days from the date of receipt of the judgment.

If the party does not file motion for rendering supplemental judgment it shall be considered that the complaint is withdrawn in this part.

Untimely and unjustified motion to supplement the judgment shall be dismissed or rejected by the court without deliberation.

Article 349

When the court finds that the motion to supplement the judgment is justified it shall schedule the main hearing to render the judgment on the request that has not been decided upon (supplemental judgment).

Supplemental judgment may be also rendered without reopening the main hearing if this judgment is to be rendered by the judge who rendered the original judgment and if the request for which supplementation is required has been sufficiently deliberated upon.

If the motion to supplement the judgment refers only to the costs of procedure decision on the motion shall be rendered by the court without holding the hearing.

Article 350

If the appeal against the judgment has been filed along with the motion to supplement the judgment, the court of first instance shall suspend delivery of the appeal to the court of second instance until decision on the motion to supplement the judgment has been reached and the deadline for appeal against this decision expires.

If the appeal is filed against the decision to supplement the judgment, this appeal shall be delivered to the court of second instance along with the appeal against the original judgment.

If the first instance judgment is contested by the appeal only because the court of first instance has not decided on all claims of parties that are the subject of litigation the appeal shall be considered as a motion of the party to reach supplemental judgment.

CORRECTION OF JUDGMENT

Article 351

Misspelled names and mistakes in numbers and other obvious mistakes in writing and calculation, defects in form and discrepancy between transcript of the judgment and the original shall be corrected by the court at any time.

The correction shall be made by a separate ruling and entered at the end of the original and the parties shall be served with transcript of the ruling.

If there is discrepancy between the original and transcript of the judgment with regard to any decision contained in the operative part of the judgment, parties shall be provided with the corrected transcript of the judgment with a note indicating that the previous transcript of the judgment has been replaced with that transcript. In such case the deadline for filing legal remedy related to the corrected part of the judgment shall start to run from the date of delivery of the corrected transcript of the judgment.

The court may decide on correction of the judgment without hearing the parties.

FINAL AND ENFORECABLE JUDGMENT

Article 352

The judgment that cannot be further contested by appeal shall become final and enforceable if it decides on the claim of the complaint or counter-complaint.

The court of first instance shall have due regard to whether final and enforceable decision has been rendered on the matter, except on the motion of parties and *ex officio*, and if it finds that the litigation has been instituted concerning the claim that has been previously decided by final and enforceable decision it shall dismiss the complaint.

If the judgment decides on the claim put forward by the defendant for the purpose of compensation of debts, the decision on existence or non-existence of that claim shall become final and enforceable.

Article 353

Final and enforceable judgment shall have legal effect only on parties except in the cases when due to the nature of the disputed relation or according to the law it has effects on third parties.

Final and enforceable judgment is bound with the state of the legal relationship at the time when the main hearing was concluded.

Article 354

In later litigation initiated upon complaint of the party against intervener who participated with him/her in the previous litigation, the court may not decide contrary to previously rendered decision except if it accepts objection to the dispute conducted in a non-conscientious manner.

Article 355

The court shall be bound by its judgment as soon as it has been rendered.

The judgment shall become effective for the parties from the date when it is rendered, while in cases referred to in Articles 342, 343 and 344 of this Law it shall become effective from the day it has been delivered to them.

TITLE TWENTY FIVE

RULING

Article 356

Any ruling rendered at the hearing shall be pronounced by the court.

The ruling that has been pronounced at the hearing shall be delivered to the parties in certified transcript only if interlocutory appeal against that ruling is allowed or if immediate enforcement may be requested immediately on the basis of that ruling or if so required for the proper managing of the litigation.

The court shall be bound by its rulings if they do not refer to managing the litigation or if otherwise prescribed by this Law.

When the ruling is not to be delivered, its effect on parties commences with its pronouncement.

Article 357

Rulings rendered by the court outside the hearing shall be communicated to the parties by delivery of the certified transcript of the ruling.

If the motion of one party is dismissed by the ruling without previously hearing the adverse party the ruling shall not be delivered to that party.

Article 358

The ruling shall contain reasoning if interlocutory appeal is allowed against it, but it may also contain reasoning in other cases when so required.

Article 359

Final and enforceable rulings on sanctions imposed under provisions of this Law shall be enforced *ex officio*.

Article 360

Provisions of Articles 334, 340 through 347 and Article 355, paragraph 2 of this Law shall also apply accordingly to the rulings.

TITLE TWENTY SIX

ORDINARY LEGAL REMEDIES

APPEAL AGAINST JUDGMENT

Right to Appeal

Article 361

Parties may file appeal against the first instance judgment within 15 days from the day of rendering or from delivery of transcript of the judgment unless a different deadline is prescribed by this Law. In disputes concerning bills of exchange and checks the deadline shall be eight days.

Appeal filed within the prescribed deadline prevents effectiveness of the judgment in the part contested by the appeal.

The court of second instance shall decide on appeal against the judgment.

Article 362

The party may waive the right to appeal from the moment of the receipt of transcript of the judgment.

The party may withdraw an already filed appeal until the second instance judgment is rendered.

Waiver or withdrawal of appeal may not be revoked.

Content of Appeal

Article 363

Appeal shall contain the following:

1) indication of the judgment against which the appeal is filed;
2) statement indicating whether the judgment is contested entirely or partially;
3) reasons for appeal, including reasoning;
4) signature of appellant.

Article 364

If on the basis of information contained in the appeal it is impossible to establish which judgment is contested or if the appeal is not signed (incomplete appeal) the court of first instance shall, by the ruling against which the appeal shall not be allowed, order the appellant to supplement or correct the appeal within eight days.

If the appellant fails to act as requested by the court within the deadline referred to in paragraph 1 of this Article the court shall render ruling on rejection of appeal as incomplete.

If the appeal has other faults concerning the content, the court of first instance shall refer appeal to the court of second instance without inviting the applicant to supplement or correct it. Supplements submitted after expiry of the deadline for filing appeal shall not be taken into account by the court of second instance.

Article 365

New facts may not be presented and new evidence may not be proposed in appeal except if the appellant proves that he/she was unable to present or propose them earlier without his/her fault before conclusion of the main hearing before the court of first instance.

When referring to the new facts the appellant shall indicate the evidence corroborating those facts and when proposing new evidence the appellant shall specify which facts are to be corroborated by that evidence.

Objections regarding the statute of limitation and compensation of debts that have not been raised before the court of first instance may not be raised in the appeal.

If new costs have been incurred due to the presentation of new facts and proposal of new evidence in the appeal procedure these costs shall be borne by the party that presented new facts or proposed new evidence regardless of outcome of the dispute.

Reasons for Contesting the Judgment

Article 366

Judgment may be appealed on the following grounds:

1) substantial violation of provisions of the civil procedure;

2) erroneously or incompletely determined facts;

3) misapplication of the substantive law.

Default judgment may not be contested on the basis of erroneously or incompletely determined facts.

Judgment based on confession and judgment based on waiver may be contested on the basis of substantial violations of provisions of civil procedure or because the statement of confession or waiver was given under delusion, duress or deceit.

If the judgment based on confession and judgment based on waiver are contested because the statement of confession or waiver was given under delusion, duress or deceit the party may present new facts in the appeal and propose new evidence concerning statements given under duress.

Article 367

Substantial violation of provisions of the civil procedure exists if the court, in the course of the procedure, failed to apply or improperly applied any provision of this Law which could have affected rendering of lawful and correct judgment.

Substantial violation of provisions of the civil procedure always exists in the following cases:

1) if the judge who has not been present at the main hearing has participated in rendering the judgment;

2) if the judge who according to the law should have been exempted (Article 69, paragraph 1, items 1 through 6) or the one who has been exempted by the ruling of the court has participated in rendering the judgment;

3) if the decision has been rendered on the claim in the dispute that does not fall within jurisdiction of the court (Article 19);

4) if it has been decided on the claim which was filed after expiry of the deadline prescribed by law;

5) if the court has decided on the statement of claims for which another type of court has subject matter jurisdiction;

6) if the court, on the objection by the party that the disputed matter was subject of the arbitration agreement reached in the decision which was included in the judgment, has wrongly decided that it was competent;

7) if, in contravention with provisions of this Law, the court grounded its decision on prohibited disposition by parties (Article 4, paragraph 3);

8) if the court has rendered default judgment, judgment based on confession, or judgment based on waiver in contravention with the provisions of this Law;

9) if one of the parties has not been presented an opportunity to speak before the court as a result of illegal action, particularly the failure of delivery,

10) if, in contravention with provisions of this Law, the court has refused request of the party to use his/her own language in the procedure or the language he/she understands and to follow the procedure in his/her own language or the language he/she understands and the party appeals against it;

11) if the court has rendered judgment without holding the main hearing and was bound to hold the main hearing;

12) if the person who cannot act as a party to the procedure has acted as the plaintiff or the defendant or if the party which is a legal person was not represented by the authorised person or if the person without litigation capacity was not represented by legal representative or if the legal representative or agent of the party did not have proper authorisation to conduct the litigation or specific litigation actions if conducting the litigation or some actions in the procedure have not been approved afterwards,

13) if it has been decided on a dispute which is already in litigation before another court or which has earlier been effectively ruled or which was decided in judicial settlement;

14) if the main hearing has been closed for public in contravention with the law;

15) if the judgment contains faults that cannot be examined, particularly if the operative part of the judgment is not understandable, if it contradicts itself or reasons of the judgment or if the judgment does not have any reasons at all or if the reasons for relevant facts are not stated or the reasons are either unclear or contradictory or there is a contradiction in respect to the relevant facts between what is stated in the reasons for the judgment on the content of the documents or records of the statements given in the procedure and actual content of the documents and court records.

Article 368

Erroneously or incompletely determined facts exist when the court has erroneously established or failed to determine a relevant fact.

Incompletely determined facts also exists when the new evidence or facts so indicate.

Article 369

Misapplication of substantive law exists when the court failed to apply provision of the substantive law which it should have applied or when such provision has not been properly applied.

Appeal Procedure

Article 370

Appeal shall be filed with the court of first instance in a sufficient number of copies for the court and the adverse party.

Article 371

Untimely, incomplete (Article 364, paragraph 1) or inadmissible appeal shall be dismissed by the ruling of the court of first instance without holding a hearing.

Appeal shall be considered untimely if filed after expiry of the deadline prescribed for its filing.

Appeal shall be considered inadmissible if filed by the person who has not been authorised to file appeal or person who waived or withdrew appeal or if the person who filed appeal does not have the legal interest to do so.

Article 372

A copy of timely, complete and admissible appeal shall be delivered by the court of first instance to the adverse party that may file response to the appeal before that court within eight days from the receipt thereof.

A copy of response to the appeal shall be delivered to the appellant by the court of first instance.

Untimely response to the appeal shall not be considered by the court of second instance.

Article 373

After receipt of the response to the appeal or after expiry of the deadline for the response to the appeal, the court shall forward the appeal and response to the appeal if filed together with the entire case files to the court of second instance within eight days at the latest.

If the appellant claims that provisions of civil procedure have been violated in the course of the first instance procedure, the court of first instance may provide explanation related to the statements contained in the appeal concerning these violations and if needed it shall conduct on-the-spot investigations to check accuracy of these statements contained in the appeal.

Article 374

When the case files upon appeal reach the court of second instance the judge rapporteur shall prepare report for the purpose of examining the case by the appeal Panel.

When required, the judge rapporteur may obtain report from the court of first instance on violations of provisions of the civil procedure and other faults indicated in appeal and request on-the-spot investigations in order to establish those violations.

Article 375

The court of second instance shall decide on appeal in a Panel session or on the basis of the hearing.

The court of second instance shall schedule hearing when it finds that in order to properly determine facts it is necessary to determine new facts or hear new evidence under conditions referred to in Article 365, paragraphs 1 and 2 of this Law.

The court of second instance shall also schedule hearing when the first instance judgment has been reversed twice and when the Panel session finds that the judgment against which the appeal has been filed is based on substantial violations of provisions of the civil procedure or erroneously or incompletely determined facts.

The court of second instance may also schedule hearing when it finds that in order to properly establish facts it is necessary to again present before the second instance court all or some pieces of evidence that have already been presented before the court of first instance.

Article 376

Parties, their legal representatives or agents shall be summoned to the hearing, as well as those witnesses and experts whom the court decides to hear.

If the appellant fails to appear at the hearing, the hearing shall not be held and decision shall be rendered based on statements contained in the appeal and response to the appeal.

If the party other than appellant fails to appear in the hearing the court shall hold the hearing and render decision.

In the summons for the hearing, the party shall be warned of the consequences of failure to appear in the court.

Article 377

The hearing before the court of second instance shall start with a brief presentation of the judge rapporteur about the state of the case without giving his/her own opinion as to whether the appeal is justified or not.

After this the judgment or part of the judgment appealed shall be read and if necessary record from the main hearing before the court of first instance shall be read as well. Thereafter the appellant shall explain the basis for his/her appeal and the adverse party shall respond to the appeal.

If a piece of evidence cannot be presented any more the court of second instance shall decide that the record on the presentation of that evidence be read.

Article 378

Provisions prescribed for the procedure before the court of first instance shall apply accordingly to the procedure before the court of second instance.

Limits of Examination of the First Instance Judgment

Article 379

The court of second instance shall examine the first instance judgment in the part which has been contested by appeal within the limits of the reasons stated in the appeal and having due regard *ex officio* to application of substantive law and violations of provisions of the civil procedure referred to in Article 367 paragraph 2, items 3, 7 and 12 of this Law.

Exceeding the statement of claims shall be taken into consideration by the court of second instance only at the request of the party.

Decisions of the Second Instance Court on Appeal

Article 380

The court of second instance may at the Panel session or on the basis of a hearing:

1) dismiss the appeal as untimely, incomplete or inadmissible;

2) reject the appeal as unjustified and confirm the first instance judgment;

3) reverse the first instance judgment and remand the case to the first instance court for retrial;

4) reverse the first instance judgment and dismiss complaint or

5) overrule the first instance judgment.

The second instance court is not bound with motion for appeal.

Article 381

Untimely, incomplete or inadmissible appeal shall be dismissed by the court of second instance by its ruling, if the first instance court failed to do so.

Article 382

By the judgment, the court of second instance shall dismiss the appeal as groundless and confirm the first instance judgment if it finds there are no reasons for contesting the judgment or that there are no reasons to be taken into consideration *ex officio.*

Article 383

The court of second instance shall render decision to reverse the judgment of the court of first instance should it find that there is a substantial violation of provisions of the civil procedure (Article 367) and it shall remand the case to the same court of first instance or assign it to the competent court of first instance for the purpose of holding a new main hearing. In this ruling the court of second instance shall decide which particular actions affected by the violation of provisions of the civil procedure shall be reversed.

If provisions of Article 367, paragraph 2, items 3, 4, 6 and 13 of this Law have been violated in the procedure before the court of first instance the court of second instance shall reverse the first instance judgment and dismiss the complaint.

If in the procedure before the court of first instance the provisions of Article 367, paragraph 2, item 12 of this Law have been violated the second instance court shall, considering nature of the violation, reverse the first instance judgment and remand the case to the competent court of first instance or it shall reverse the first instance judgment and dismiss the complaint.

Article 384

The court of second instance shall also by its ruling reverse the judgment of the court of first instance and remand the case to that court for a new trial if it believes that proper determination of the facts requires holding a new main hearing before the court of first instance.

The second instance court shall also act in the same way if due to erroneous application of substantive law the determination of the facts has not been complete.

Article 385

When the court of second instance reverses judgment of the court of first instance and remands the case to the same court for retrial it may order that the main hearing be held before another judge.

Article 386

If it finds that the first instance judgment exceeded the statement of claims whereby the court decided about another statement of claims instead of the one which was requested, the second instance court shall render ruling to reverse the judgment of the court of first instance and remand the case for retrial.

If it finds that the first instance judgment exceeded the statement of claims whereby more was awarded than what was requested, the court of second instance shall render ruling to reverse the judgment of the court of first instance in this part in which the statement of claims has been exceeded.

Article 387

The court of second instance shall overrule the judgment of the first instance court with its own judgment in the following cases:

1) if on the basis of the hearing it has determined different facts from those determined by the first instance judgment;

2) if the court of first instance erroneously evaluated documents and indirectly presented evidence whereby the decision of the first instance court is exclusively grounded on such evidence;

3) if the court of first instance on the basis of facts it determined drew wrong conclusion about existence of other facts and such facts form grounds of the judgment;

4) if it believes that the facts in the first instance judgment are correctly determined, but that the court of first instance erroneously applied substantive law.

Article 388

The court of second instance may not overrule the judgment to the detriment of the appellant if only that party filed appeal.

Article 389

The court of second instance shall in the reasoning of the judgment or ruling assess reasons of appeal that are of crucial importance and state the reasons it has taken into consideration *ex officio*.

When the first instance judgment is reversed because of substantial violations of provisions of the civil procedure the reasoning shall indicate which provisions have been violated and what the violations consist of.

If the first instance judgment is reversed and the case remanded to the court of first instance for retrial for the purpose of proper determination of facts, it shall be indicated which faults in determination of facts have been made.

Article 390

The court of second instance shall remand all case files to the court of first instance accompanied with a sufficient number of certified transcripts of its own decision for the purpose of delivery to the parties and other persons concerned within 30 days from rendering the decision.

Article 391

Immediately upon receipt of the ruling rendered by the court of second instance, the court of first instance shall schedule deliberation for the main hearing which shall be held no later than 30 days from the day of receiving the ruling of the second instance court.

The court of first instance shall conduct all litigation actions and clarify all disputed matters indicated in the ruling of the second instance court.

Article 392

Provisions of Articles 383 through 386, 389, paragraphs 2 and 3, and Article 391 of this Law do not apply when the court of second instance, under provisions of this law, has held the main hearing.

APPEAL AGAINST THE RULING

Article 393

Appeal against the ruling of the court of first instance shall be allowed unless this Law prescribes that the appeal shall not be allowed.

If this Law explicitly prescribes that interlocutory appeal shall not be allowed, the ruling of the court of first instance may be contested only in the appeal against the final decision.

Article 394

Timely filed appeal shall suspend enforcement of the ruling unless this Law prescribes otherwise.

The ruling against which interlocutory appeal is allowed may be enforced immediately.

Article 395

When deciding on appeal, the court of second instance may:

1) dismiss the appeal as untimely, incomplete or inadmissible;

2) reject the appeal as ungrounded and confirm ruling of the court of first instance;

3) accept the appeal and overrule or reverse the ruling and remand the case for retrial if necessary.

Article 396

Provisions pertaining to the appeal against the judgment shall apply accordingly when deciding on appeal against the ruling, except for the provisions on holding the hearing before the court of second instance.

TITLE TWENTY SEVEN

EXTRAORDINARY LEGAL REMEDIES

REVIEW

Article 397

Parties may file request for review of the final and enforceable judgment of the court of second instance within 30 days from the day of the delivery of the judgment.

The review shall not be allowed in property disputes where the statement of claims relates to an amount of money, delivery of an object or committing some other action if the value of the disputed matter in the contested part of the final and enforceable judgment does not exceed the amount of EUR 5 000.

The review shall not be allowed in property disputes when the statement of claims does not relate an amount of money, delivery of an object or committing some other action if the value of the disputed matter indicated in the complaint by the plaintiff does not exceed the amount of EUR 5 000.

Exceptionally and related to the statement of claims referred to in paragraphs 2 and 3 of this Law, the review shall always be allowed:

1) in disputes on maintenance support when the maintenance support has been determined for the first time or reversed;

2) in disputes regarding the compensation of damage for the lost maintenance support due to the death of supporter of the maintenance and due to the loss of earning or other income from work when those compensations have been determined for the first time or reversed;

3) in property disputes arising from unconstitutional and illegal individual acts and actions by which legal or natural persons are placed in an unfair position in the market due to their seat or place of permanent residence or the market is violated in some other manner, involving disputes on the compensation of damage caused by it.

Article 398

The Supreme Court of the Republic of Montenegro shall decide on the review.

Article 399

The submitted request for review shall not suspend enforcement of the final and enforceable judgment for which it has been filed.

Article 400

The review may be requested for the following reasons:

1) substantial violation of provisions of the civil procedure referred to in Article 367, paragraph 2 of this Law unless the court of first instance has decided on the statement of claims

for which the other type of court is competent (Article 367, paragraph 2, item 5) or if court of first instance on the objection of the party, according to which the arbitration agreement has been concluded for the dispute, erroneously decided in the decision that was included in the judgment that it is competent (Article 367, paragraph 2, item 6) or if the court of first instance rendered judgment without the main hearing, though it was obliged to hold it (Article 367, paragraph 2, item 11) or if it has been decided on the claim which is already in the undergoing litigation (Article 367, paragraph 2, item 13) or if the main hearing has been closed for public contrary to the law (Article 367, paragraph 2, item 14).

2) substantial violation of provisions of the civil procedure referred to in Article 367, paragraph 1 of this Law committed in the court of second instance;

3) misapplication of substantive law.

Review may be requested for exceeding the statement of claims only if such violation has been committed before the court of second instance.

Review may be not requested for erroneously or incompletely determined facts.

Review may be requested for the judgment rendered in second instance by which the first instance judgment based on confession is confirmed only for the reasons stated in paragraph 1, items 1 and 2 and paragraph 2 of this Article.

Review may not be requested for the judgment rendered in second instance which confirms the first instance judgment for substantial violations of provisions of civil procedure referred to in paragraph 1, item 1 of this Article if their existence has not been indicted in the claim, except for the violations to which the court of review and the second instance have due regard *ex officio.*

Article 401

The review court shall examine the contested judgment only in the part which has been contested by the request for review and within the limits of reasons indicated in the request for revision having due regard *ex officio* to the substantial violation of provisions of the civil procedure referred to in Article 367, paragraph 2, item 12 of this Article and proper application of substantive law.

Article 402

Parties are entitled to state new facts and propose new evidence in the request for review only if they are linked to the substantial violation of provisions of the civil procedure for which the review may be requested.

Article 403

The request for review shall be filed with the court that rendered the first instance judgment in a sufficient number of copies for the court and the adverse party.

Article 404

The court of first instance shall by its ruling dismiss untimely, incomplete or inadmissible request for review without holding the hearing.

The review is inadmissible if filed by a person that is not authorised to file for review or a person who waived review or if a person who filed for the review does not have legal interest to file review or if the review has been filed against the judgment for which the review may not be filed under the law.

Article 405

Copy of timely, complete and admissible request for review shall be delivered to the adverse party by the court of first instance within eight days.

The adverse party may submit to the court its response to the request for review within eight days from the day of receipt of the request for the review.

After receiving the response or after making statement regarding the review or after expiry of the deadline for responding the first instance court shall forward the request for review and the response to the review, if filed, along with all case files to the review court through the court of second instance within eight days.

Article 406

The review court shall decide without holding the hearing.

Article 407

Untimely, incomplete or inadmissible review shall be dismissed by the review court in its ruling if the court of first instance failed to do so within the limits of its powers (Article 404).

Article 408

The review court shall in its judgment dismiss the request for review as ungrounded if it finds that the reasons for which the review was requested and the reasons to be taken into consideration *ex officio* do not exist.

Article 409

If it determines the existence of substantial violations of provisions of civil procedure referred to in Article 367, paragraphs 1 and 2 of this Law, which justifies the request for review, with the exception of violations referred to in paragraphs 2 and 3 of this Article, the review court shall render ruling on entirely or partially reversing the second instance judgment and first instance judgment or only the second instance judgment and shall remand the case for retrial to the same or a different judge of the court of first instance or the same or different Panel of the court of second instance or to another competent court.

The review court shall reverse the rendered decisions and dismiss complaint in the event of violation referred to in Article 367, paragraph 2, item 3,4, 6 and 13 of this Law in the procedure before the court of first and second instance.

In the event of violation referred to in Article 367, paragraph 2, item 12 of this Law before the court of first and second instance and depending on the nature of the violation, the review court shall proceed in accordance with provisions from paragraphs 1 or 2 of this Article.

Article 410

If the review court finds that the substantive law has been misapplied it shall render a judgment admitting the request for review and overruling the contested judgment.

If the review court determines that the facts have been incompletely determined due to the misapplication of the substantive law that therefore the requirements for overruling the contested judgment have not been met, it shall entirely or partially reverse judgment of the court of first instance and court of second instance or only judgment of the court of second instance and remand the case for retrial to same or different Panel of the court of first instance or court of second instance.

Article 411

Should the review court determine that the statement of claims has been exceeded by the final and enforceable second instance judgment it shall, depending on the nature of the exceed the statement of claims, reverse the judgment of the court of second instance in its ruling and if necessary remand the case to the second instance court for retrial.

Article 412

Decision of the review court shall be delivered to the court of first instance through the court of second instance within 30 days from rendering the decision.

Article 413

Unless stipulated otherwise in Articles 397 through 412 of this Law, the provisions of this Law on the appeal against a judgment from Article 362, paragraphs 2 and 3, Article 363, 364, 369, Article 372, paragraph 2, article 374, 380, 385, and Articles 388 through 391 of this Law shall apply accordingly to the review procedure.

Article 414

Parties may also file request for review against the final and enforceable ruling rendered by the second instance court which effectively concluded the procedure.

The request for review of the ruling referred to in paragraph 1 of this Article shall not be allowed in disputes where the review against the final and enforceable judgment would not be allowed (Article 397, paragraphs 2 and 3).

Review shall always be allowed for the second instance ruling on dismissal of appeal or confirmation of the first instance decision on rejection of the review.

Review shall always be allowed against second instance ruling by which it has been finally decided on the motion for reopening the procedure.

Provisions of this Law regulating the review of the judgment shall apply accordingly to the procedure upon the review of the ruling.

Article 415

The court to which the case has been remanded for retrial is bound in this case with legal opinion which forms grounds for ruling of the review court which has reversed the second instance judgment or reversed the second instance and first instance judgment.

Article 416

Public prosecutor may file request for the protection of legality against final and enforceable court decision only on grounds of substantial violations of provisions of civil procedure referred to in Article 367, paragraph 2, item 7 of the Law within three months.

The deadline for filing request for the protection of legality referred to in paragraph 1 of this Article shall be counted as follows:

1) against the decision rendered in the first instance against which appeal has not been filed – as of the day when it was not possible to contest that decision by an appeal;

2) against the decision rendered in second instance - as of the day when that decision has been delivered to the party to which it has been delivered later.

Request for the protection of legality shall not be allowed against the decision rendered upon review by the court competent to decide on that legal remedy (Article 398).

Article 417

The court referred to in Article 398 of this Law decides on the request for protection of legality.

Article 418

If both, the request for review and request for the protection of legality have been filed against the same decision, the court referred to in Article 398 of this Law shall decide on those legal remedies by rendering a single decision.

Article 419

Public prosecutor shall be notified of holding the session where the court shall consider the request for protection of legality.

Article 420

When deciding upon request for the protection of legality, the court shall restrict itself only to the examination of the violation set forth by the public prosecutor in his/her request.

Unless otherwise provided by Articles 416 through 419 of this Law, in the procedure on the request for the protection of legality the provisions Articles 399, 402 through 409 and Articles 412 and 413) of this Law shall apply accordingly.

REOPENING THE PROCEDURE

Article 421

Procedure completed by a final court decision may be reopened at the party's motion if:

1) a party has not been given the possibility to be heard before the court by some illegal action, particularly omission of delivery;

2) the personal delivery of the first writ has been conducted in accordance with article 141 of this Law and the party was continually absent longer than three months;

3) the person who may not be a party to the procedure participated in the procedure in capacity of plaintiff or defendant or a legal person in capacity of party has not been represented by an authorised person, or a party without litigation capacity was not represented by legal representative, or if legal representative or agent of the party has not had necessary authorisation

for conducting the procedure or particular litigation actions, unless conducting the procedure or particular litigation actions, has been subsequently approved;

4) the court decision has been grounded on a false testimony by a witness or expert witness;

5) the court decision has been grounded on a false document or a document where the false content has been certified;

6) rendering the court decision involved a criminal act of the judge, legal representative or the agent of the party, adverse party or any third party;

7) the party acquires possibility to use the final and enforceable decision of the court which has already been rendered on the same dispute and between the same parties;

8) the court decision has been grounded on the other decision of the court or some other authority and that other decision is effectively overruled, reversed and annulled;

9) the party learns new facts or finds or acquires the possibility to use new evidence that would have led to a more favorable decision for the party if those facts or evidence had been presented in the previous procedure.

Article 422

Reopening the procedure may not be requested for the reasons stated in Article 421, items 1 and 3 of this Law if the same reason was unsuccessfully presented in the previous procedure.

Reopening due to the circumstances stated in Article 421, sub- paragraphs 7, 8 and 9 of this Law may be allowed only if a party, through his/her fault, was unable to present those circumstances prior to the conclusion of the previous procedure by the final and enforceable court decision.

Article 423

Motion for reopening shall be filed within 30 days, as follows:

1) in the case referred to in Article 421, items 1 and 2 of this Law – as of the date when the decision was delivered to the party.

2) in the case referred to in Article 421, item 3 of this Law, if a person who may not be party in the procedure has participated in the procedure in capacity of the plaintiff or defendant – as of the date the decision was delivered to that person; if a legal person in capacity of a party is not represented by an authorised person or if a party without litigation capacity has not been represented by legal representative – as of the date the decision was delivered to the party or his/her legal representative; if a legal representative or party's agent has not had the necessary authorisation for conducting the procedure or for particular litigation actions – as of the date the party found out about that reason;

3) in the cases referred to in Article 421, items 4 through 6 of this Law – as of the date the party learnt about the final and enforceable judgment in the criminal procedure; and if the criminal procedure may not be conducted then as of the date he/she learned about suspension of the procedure or circumstances due to which the procedure may not be initiated;

4) in cases referred to in Article 421, items 7 and 8 of this Law – as of the date when the party was able to execute the final and enforceable decision of the court which is the reason for reopening the procedure;

5) in the case referred to in Article 421, item 9 of this Law – as of the date the party was able to present new facts or new evidence to the court.

If a deadline set in paragraph 1 of this Article would commence before the decision becomes final and enforceable, the deadline shall be counted from the date the decision becomes

final and enforceable unless a legal remedy has been filed against it or from the delivery of the final and enforceable decision of higher court rendered in the last instance.

Motion for reopening the procedure may not be filed after expiry of five years from the date the decision has become final and enforceable, unless reopening is requested for the reasons stated in Article 421, items 1, 2 and 3 of this Law.

Article 424

Motion for reopening the procedure shall always be filed with the court that rendered the first instance decision.

The motion shall contain the following: the legal grounds for reopening, the circumstances indicating that the motion was filed within the deadline determined by law and the evidence corroborating arguments of the proposing party.

Article 425

The court shall reject by its ruling the untimely (Article 423), incomplete (Article 424, paragraph 2) or inadmissible (Article 423) motions for reopening the procedure without holding a hearing.

If the court does not reject the motion, it shall serve the copy of the motion to the adverse party under provisions of Article 136 of this Law who is entitled to give the response within 15 days.

Article 426

After the motion for reopening the procedure has been filed the court of first instance may hold deliberation to discuss the motion.

Article 427

The court of first instance decides on the motion, except if the reason for reopening the procedure is only related exclusively to the procedure before a higher court (Article 428)

The court decides on the motion for reopening for procedure its ruling.

The ruling which allows reopening the procedure shall pronounce that the decision rendered in the previous procedure is reversed.

The court shall set the main hearing only after the ruling which allows reopening the procedure becomes final and enforceable. At the new main hearing, parties may present new facts and propose new evidence apart from those for which the reopening the procedure has been allowed if they prove it likely that they were not able to present or propose them in the previous procedure without their fault.

Article 428

If the reason for reopening the procedure relates exclusively to the procedure before higher court then the court of first instance shall, upon receipt of the response to the motion if it has been filed, or after holding a hearing for deliberation on the motion for reopening the procedure, forward the case to the higher court to render decision.

When the case is received by the higher court, the court shall act under provisions of Article 374 of this Law.

The higher court decides on motion for reopening the procedure without holding a hearing.

When the higher court finds that the reason stated in favor of motion for reopening the procedure is justified and that it is not necessary to hold a new main hearing, it shall reverse its

own decision and also the decision of higher court if it exists and render new decision on the main subject matter.

RELATION BETWEEN MOTION FOR REOPENING THE PROCEDURE AND OTHER EXTRAORDINARY LEGAL REMEDIES

Article 429

If the party files the motion for reopening the procedure due to reasons and within the deadline for filing the review, it shall be considered that the party filed request for review.

Should the party file request for review for reasons started under Article 367, paragraph 2, item 13 of this Law or simultaneously or subsequently the files motion for the reopening the procedure for any reason under Article 421 of this Law, the court shall stay the procedure with regard to the motion for the reopening the procedure until the conclusion of the review procedure.

If the party files request for review for any of the reasons, with the exception of that stated in Article 367, paragraph 2, item 13 of this Law and simultaneously or subsequently files motion for reopening the procedure for the reasons stated in Article 421, items 4 through 6 of this Law corroborated by the final and enforceable judgment rendered in criminal procedure, the court shall stay the review procedure until the conclusion of the procedure with regard to the motion for reopening the procedure.

In all other cases where a party files request for review and simultaneously or subsequently files motion for reopening the procedure, the court shall decide which procedure to resume and which one to stay, taking into consideration all circumstances and particularly the reasons due to which both legal remedies have been filed and evidence proposed by parties.

Article 430

Provisions of Article 429, paragraphs 1 and 3 of this Law shall also apply when the party first filed motion for reopening the procedure and thereafter filed request for review.

In all other cases where a party files motion for reopening the procedure and thereafter files request for review, the court shall, as a rule, stay the review procedure until the conclusion of the reopening procedure, unless it finds serious reasons demanding different actions.

Article 431

The court of first instance shall render ruling referred to in Article 429 of this Law if the motion for reopening the procedure reaches the court of first instance before the case for review reaches the review court. If the motion for reopening the procedure reaches the court of first instance after the case has already been referred to the review court, the ruling referred to in Article 429 of this Law shall be rendered by the review court.

The court of first instance shall render ruling referred to in Article 430 of this Law, except if the case, at the time the request for review is received at the court of first instance, has been delivered to the higher court to render decision on reopening the procedure upon motion (Article 428, paragraph 1) in which case the ruling shall be rendered by the higher court.

Appeal against ruling referred to in paragraphs 1 and 2 of this Article shall not be allowed.

Article 432

Provisions of Articles 429 through 433 of this Law shall accordingly apply when the public prosecutor in compliance with provisions of Article 416 of this Law files request for the protection of

legality and the party submits motion for reopening the procedure before, at the time or after that time.

P A R T THREE

SPECIAL PROCEDURES

TITLE TWENTY EIGHT

PROCEDURE IN LITIGATION CONCERNING LABOUR RELATIONS

Article 433

Other provisions of this law shall apply in the litigation concerning labor relations, unless this Title contains special provisions.

Article 434

In the litigation on labor relations, particularly when setting the deadlines and deliberations, the court shall always give expedited treatment to the labor disputes.

Article 435

In the course of the procedure the court may *ex officio* determine temporary measures which are applied in enforcement procedure to prevent violent actions or remove irreparable damage. Interlocutory appeal against this ruling shall not be allowed.

Article 436

The court shall, in the judgment ordering the performance of certain action, set a deadline of eight days for the performance of that action.

Article 437

The deadline for filing an appeal shall be eight days.

Article 438

The review is allowed in disputes concerning the beginning, existence and termination of employment.

TITLE TWENTY NINE

PROCEDURE IN LITIGATION CONCERNING TRESPASSING

Article 439

Other provisions of this Law shall apply in the litigation on trespassing, unless this Title contains special provisions.

Article 440

In setting the deadlines and deliberations on complaints for trespassing, the court shall always have due regard to the necessity of expedited treatment considering the nature of every single case.

Article 441

The deliberation on the complaint for trespassing shall be limited to deliberation and proving of facts pertaining to the latest situation of possession and the disturbance thereof.

The deliberation as to the right to the real estate, legal grounds and possession of real estate in good faith and in bad faith or claims for award of damages shall be excluded.

Article 442

In the course of the procedure court may *ex officio* determine temporary measures, without hearing of the adverse party, that are applied in enforcement procedure to eliminate immediate threat against legal damage, prevent violence or eliminate irreparable damage. Interlocutory appeal against this ruling shall not be allowed.

Article 443

The deadline for filing appeal is eight days.

In extraordinary circumstances the court may decide that that the appeal shall not suspend enforcement of the ruling.

The request for review shall not be allowed against rulings rendered in the litigation concerning the trespassing.

Article 444

In the enforcement procedure, the plaintiff shall lose the right to request enforcement of the ruling rendered upon the complaint for the trespass which orders the defendant to perform certain action unless he/she requested enforcement within the 30 days upon expiry of the deadline set by the ruling for the performance of that action.

Article 445

Reopening the procedure on trespassing that has been finalised with final and enforceable decision shall be allowed only for the reason under Article 421, items 1, 2 and 3 of this Law and only within 30 days from the date of rendering final and enforceable ruling on trespassing.

TITLE THIRTY

SMALL CLAIM DISPUTES PROCEDURE

Article 446

Other provisions of this Law shall apply to the small claim disputes procedure, unless this Title contains special provisions.

Article 447

For the purposes of the provisions of this Title, small claim disputes are those in which the statement of claims refers to the pecuniary claim that does not exceed the amount of EUR 500.00.

Small claim disputes shall also include disputes in which the statement of claims is not of pecuniary nature and the plaintiff has stated in the complaint that he/she will accept certain monetary sum that does not exceed the amount referred to in paragraph 1 of this Article *in lieu of* the obligation disclosed in the complaint (Article 36, paragraph 1).

Small claim disputes shall also include those disputes in which the statement of claims is not of pecuniary nature, but the transfer of a moveable asset whose value, as stated in the complaint by the plaintiff, hat does not exceed the amount referred to in paragraph 1 of this Article (Article 36, paragraph 2).

Article 448

For the purposes of the provisions of this Title, disputes concerning real estate, labor relations and trespassing shall not fall within the category of small claim disputes.

Article 449

In the small claim disputes, the interlocutory appeal shall be allowed only against the ruling on conclusion of the procedure.

Other rulings, against which an appeal is allowed in accordance with this Law, may be contested only by the appeal against the decision on conclusion of the procedure.

Rulings referred to in paragraph 2 of this Article shall not be delivered to the parties, but shall be pronounced at the hearing instead and included in written form of the decision.

Article 450

In the small claim disputes procedure, the record of the main hearing, in addition to the information required under Article 118, paragraph 1 of this Law shall also contain the following:

1) statements of parties which are important, particularly the ones which entirely or partly admit the statement of claims or waive the statement of claims or the appeal, or overrule or withdraw complaint;

2) significant substance of the presented evidence;

3) decisions against which the appeal is allowed and which have been pronounced at the mean hearing;

4) whether the parties were present during pronouncement of the judgment and, if they were, whether they were instructed about conditions of the appeal.

Article 451

If the plaintiff amends the statement of claims so that the value of the dispute exceeds EUR 500.00, the procedure shall be concluded in accordance with the provisions of this Law on regular procedure.

If the plaintiff, before conclusion of the main hearing conducted in accordance with the provisions on regular procedure of this Law, reduces his/her claim so that it does not exceed EUR 500.00 any more further procedure shall be conducted in accordance with the provisions of this Law on the small claim disputes.

Article 452

If the court schedules the main hearing and the plaintiff fails to appear at the hearing in spite of being duly summoned the court renders judgment by which it shall dismiss the statement of claims (the judgment based on waiver).

Summons for the main hearing shall state that, *inter alia*, that if the plaintiff fails to appear at the first deliberation for the main hearing it shall be considered that he/she has withdrawn the claims and that the decision may be contested only on the basis of substantial violation of provisions of the civil procedure and misapplication of substantive law.

Article 453

The judgment in the small claim disputes procedure shall be pronounced immediately after conclusion of the main hearing.

Transcript of the judgment shall always be delivered to the party who has not been present at the pronouncement, while it is delivered to the party who was present only upon his/her request. Such request may be expressed by the party at the hearing where the judgment is being announced, but not later.

When pronouncing the judgment the court shall inform the present parties on conditions for filing appeal (Article 454).

Article 454

The judgment or ruling by which the small claim disputes procedure is completed may be contested only on the basis of substantial violation of provisions of the civil procedure under Article 367, paragraph 2 of this Law and misapplication of substantive law.

In the procedure on appeal in case of the small claim disputes procedure, the provisions of Article 384, paragraph 1 of this Law shall not apply neither shall provisions of this Law on holding the hearing before the court of second instance apply.

The appeal against the first instance judgment or ruling referred to in paragraph 1 of this Article may be filed by parties within eight days.

Deadline for appeal is counted from the day of pronouncing the judgment or ruling and if the judgment or ruling has been delivered to the party the deadline runs from the day of its receipt.

In the small claim disputes procedure the deadline under Article 334, paragraph 2, and Article 348, paragraph 1 of this Article of this Law shall be eight days.

TITLE THIRTY ONE

PROCEDURE IN COMERCIAL DISPUTES

Article 455

Provisions of this Law shall apply in commercial disputes, unless otherwise prescribed in provisions of this Title.

Rules on procedure in commercial disputes shall also apply to all disputes for which the competent court is commercial court according to the Law on Courts except in disputes for which it has subject matter jurisdiction.

PREPARATION FOR THE MAIN HEARING

Article 456

In emergency cases the judge is authorised to schedule hearings by telephone or facsimile.

Article 457

As a rule, the facts about the turnover of goods and services accompanied by standard business documents shall be proved by such documents.

LEGAL REMEDIES

Article 458

Review of commercial disputes shall not be allowed if the value of the dispute of the contested part of final and enforceable judgment does not exceed the amount of EUR 25 000.

Review of commercial disputes shall be always allowed in the disputes under Article 397, paragraph 4, item 3 of this Law.

Article 459

The following deadlines are prescribed in commercial disputes:

1) deadline of 15 days for responding to the appeal;

2) deadline of 30 days for submitting motion for returning to the previous stage under Article 113, paragraph 3 of this Law;

3) deadline of eight days for the appeal against the judgment or ruling and deadline of three days for responding to the appeal;

4) deadline of eight days for execution of the act, however for the acts not involving monetary payments, the court may order longer deadline.

Article 460

In the procedure on commercial disputes the small claim disputes procedure is the one in which the value of the statement of claims refers to the monetary claim that does not exceed the amount of EUR 5 000.

The small claim disputes procedure is also the dispute where the claimed matter is not an amount of money, but the plaintiff has stated in the complaint that he/she would accept a certain amount of money *in lieu of* satisfaction of the claim when the amount so stated does not exceed the amount defined under paragraph 1 of this Article (Article 36, paragraph 1).

The small claims disputes are also disputes where the matter of the dispute is not an amount of money, but transfer of movable object whose value as stated by the plaintiff in his/her complaint does not exceed the amount specified in paragraph 1 of this Article (Article 36, paragraph 2).

TITLE THIRTY TWO

ISSUANCE OF PAYMENT ORDER

Article 461

If the statement of claims refers to the claim that has become due in money and this claim is proved by authentic document which is submitted with the complaint either in original or certified copy the court shall order the defendant to fulfill the statement of claims (payment order).

Authentic documents shall be the following:

1) public documents;

2) private documents in which signature of the debtor has been certified by the authority competent for certification ;

3) bills of exchange and checks with objection to payment and reverse accounts when they are necessary for establishing of the claim;

4) excerpts from certified business books;

5) invoices;

6) documents considered as public documents under special regulations.

The court shall issue payment order even though the plaintiff did not suggest issuance of the payment order in the complaint whereby all conditions for its issuance have been met.

When execution based on the authentic document may be requested in accordance with Law on Enforcement Procedure, the court shall issue payment order if only plaintiff proves likely his /her legal interest for issuing the payment order.

If the plaintiff does not prove likely his/her legal interest for issuing the payment order the court shall reject the complaint.

Article 462

If the statement of claims refers to the claim that has become due in money which does not exceed the amount of EUR 500.00 the court shall issue payment order against the defendant even though authentic documents have not been submitted with the complaint, however the complaint states basis and amount of debt and indicates evidence on the basis of which accuracy of the statements in the complaint may be verified.

Payment order referred to in paragraph 1 of this Article may be issued by the court only against main debtor.

Article 463

The court shall issue payment order without holding the hearing.

The court shall indicate in the payment order that the defendant shall, within eight days or in the bill of exchange or check disputes within three days from delivery of the payment order, fulfill statement of claims together with all costs calculated by the court and shall also submit objections to the payment order within the same deadline. In the payment order the court shall warn the defendant of rejection of untimely submitted objections.

Payment order shall be delivered to parties.

The defendant shall, in addition to the payment order, be also delivered a copy of complaint with attachments.

Article 464

If the court does not accept motion for issuance of payment order the procedure will continue in accordance with the complaint.

Appeal against the ruling of the court which accepts motion for issuance of the payment order shall not be allowed.

Article 465

Payment order may be contested only by objection. If the payment order is contested only in the part referring to the costs this decision may be contested only by appeal against the ruling.

Article 466

Untimely, incomplete or inadmissible objections shall be dismissed by the court without holding hearing.

If the objections are submitted timely, the court shall evaluate whether it is necessary to schedule preliminary hearing or whether it may immediately schedule the main hearing.

In the course of the preliminary hearing, parties may present new facts and propose new evidence and the defendant may raise new objections referred to the contested part of the payment order.

The court shall decide in the decision of the main subject matter whether the payment order entirely or partially stays in force or becomes annulled.

Article 467

If the defendant puts forward the objection that legal grounds for issuance of the payment order did not exist (Article 461 and 462) or that there are obstructions for further course of the procedure, the court shall first decide on this objection. If it finds that this objection is justified, it shall annul the payment order with its ruling and after the ruling becomes final and enforceable it shall initiate deliberation on the main subject matter when there are conditions for such deliberation.

If the court does not accept this objection, it shall proceed to deliberate on the main subject matter and include its decision on the main subject matter in the ruling.

If, upon objection regarding non-maturity, the court finds that the claim has become due after issuance of the payment order, but before the conclusion of the main hearing, payment order will be reversed by the judgment and the court shall decide on the statement of claims (Article 322, paragraph 1).

Article 468

The court may declare that it has not territorial jurisdiction until issuance of payment order.

Defendant may file objection against territorial jurisdiction only in the objection against payment order.

Article 469

If the court declares after issuing the payment order that it does not have territorial jurisdiction it shall annul the payment order and assign the case to the competent court after the ruling on non-competence becomes final and enforceable.

If the court establishes after issuing the payment order that it has territorial jurisdiction it shall not annul the payment order, instead it shall assign the case to the competent court after the ruling becomes final and enforceable.

Article 470

When the court in the cases in accordance with this Law decides to dismiss the complaint, it shall also reverse the payment order.

Article 471

The plaintiff may withdraw the complaint without consent of the defendant only before submission of objection. If the complaint has been withdrawn the court shall reverse the payment order by its ruling.

If the defendant waives all objections before conclusion of the main hearing the payment order shall remain in force.

P A R T FOUR

ARBITRATION PROCEDURE

TITLE THIRTY THREE

ARBITRABILITY

GENERAL PROVISIONS

Article 472

This Chapter prescribes arbitration procedure based in the Republic of Montenegro, unless it arises from the provisions of some other law or an international treaty that a certain arbitration based in the Republic of Montenegro is considered a foreign arbitration.

Article 473

In disputes involving natural persons who have permanent or habitual residence or legal persons seated in the Republic of Montenegro, parties may agree on domestic arbitration for the settlement of disputes regarding rights of which they may freely dispose, unless it is provided by law that certain disputes shall be exclusively settled by other courts.

In disputes in which at least one party is the natural person with permanent or habitual residence abroad or legal person seated abroad, parties may also agree on foreign arbitration for the settlement of disputes regarding rights of which they may freely dispose, unless it is provided by law or international treaty that a domestic court has exclusive jurisdiction.

Parties may agree to bring disputes referred to in paragraphs 1 and 2 of this Article before permanent or *ad hoc* Arbitration Board.

ARBITRATION AGREEMENT

Article 474

Arbitration agreement is an agreement of the parties to submit to arbitration all or certain disputes that have arisen between them or that may arise in the future in respect of a defined legal relationship of a contractual or non-contractual nature. Agreement may be concluded in the form of an arbitration clause in a contract or in the form of a separate agreement.

Arbitration agreement shall be valid only if concluded in writing. Agreement is concluded in writing if it is contained in documents signed by parties or in an exchange of letters, telegrams, telex or other means of telecommunication that provide a written record of the agreement that has been concluded.

Arbitration agreement is also concluded in writing if it has been drafted by the exchange of a complaint in which the plaintiff specifies the existence of the agreement and the response to the complaint in which the defendant does not deny it.

The reference in arbitration agreement to a document containing an arbitration clause (general terms of a conclusion of a legal matter, wording of another agreement or similar) constitutes an arbitration agreement provided that the agreement has been concluded in writing and if the reference is such that the clause forms integral part of the agreement.

ARBITRATION BOARD

1. Appointment, rights and duties and exemption of arbitrators

Article 475

If the parties have not agreed otherwise, three arbitrators shall be appointed.

Judges may be appointed as Presidents of arbitration Panel or individual arbitrators.

Article 476

A party, who is to appoint the arbitrator on the basis of the arbitration agreement, may be summoned by the adverse party to perform the said appointment within 15 days and shall notify the adverse party thereof.

The summons, within the meaning of paragraph 1 of this Article, shall be valid only if the issuing party has appointed his/her arbitrator and informed the adverse party thereof.

When, under the arbitration agreement, a third party is to appoint the arbitrator each party may send the summons referred to in paragraph 2 of this Article to that person.

A person summoned to appoint the arbitrator is bound to the appointment from the moment the adverse party or one of the parties has been notified of the appointment.

Article 477

If the arbitrator has not been appointed on time and the agreement does not state otherwise the arbitrator shall be appointed by court upon proposal of the party.

If the arbitrators cannot agree as to the election of the President and the agreement does not state otherwise the President shall be appointed by the court upon the proposal of each arbitrator or a party.

The court that would have been competent for the first instance procedure if the arbitration agreement had not been concluded shall be competent for appointment of arbitrator or President of the Arbitration Board.

Appeal against the court ruling shall not be allowed.

The party that does not want to use the authorisation referred to in the paragraphs 1 and 2 of this Article may request in the complaint that the court competent for appointment proclaims the arbitration agreement null and void.

Article 478

Except for the case referred to in Article 477 of this Law, any party may request in the complaint that the court proclaims the arbitration agreement null and void if:

1) the parties cannot agree on appointment of arbitrators whom they need to elect within 30 days from the first invitation to appoint arbitrator;

2) the person who has been appointed arbitrator in the arbitration agreement does not want to or is not able to perform that duty.

The court foreseen in Article 477, paragraph 3 of this Law shall decide on the request.

The court shall summon the parties to the hearing for deliberation upon the request, but the court may also render decision if duly summoned parties failed to appear at the hearing.

Article 479

Arbitrator shall accept appointment in writing. Such acceptance may be made by signing the arbitration agreement of parties.

Arbitrator shall conduct the arbitration with due expeditiousness and timely undertake procedural actions and to take care of avoidance of any delay of the procedure.

Unless agreed otherwise by parties, they may discharge by their consent the arbitrator that fails to perform his/her duties or does not perform them in a timely manner.

Arbitrator is entitled to reimbursement of costs and a remuneration for the work completed, unless he/she has waived these rights in writing. The parties shall be jointly and severally liable for the payment of such costs and remuneration.

Article 480

The arbitrator shall exempt himself/herself when the grounds for exemption stipulated in Article 69 of this Law exist. The parties may request the exemption of the arbitrator for the same reasons.

Exemption of arbitrators may be requested if the arbitrator does not have necessary qualifications agreed upon by parties as well as if he/she fails to fulfill his/her obligations from Article 479 paragraph 2 of this Law.

A party who has individually or together with the adverse party appointed the arbitrator may request his/her exemption only if reason for exemption occurred or the party learnt about it after appointment of the arbitrator.

Parties may agree on the procedure for exemption, but they may not exclude application of provisions of paragraph 7 of this Article.

If such agreement does not exist, the party who intends to file request for exemption shall, within 15 days after becoming aware of appointment of the arbitrator or after becoming aware of any circumstances referred to in paragraph 1 and 2 of this Article, file to the Arbitration Board a written statement of the reasons for exemption.

If the arbitrator whose exemption is requested does not withdraw or the other party does not agree with the request for his/her exemption, the Arbitration Board, including the arbitrator subject to the exemption, shall promptly decide on the exemption.

If the request for exemption under the procedure specified in paragraph 4 of this Article and paragraph 6 of this Article is not successful the party requesting exemption may, within 30 days after having received notice of the decision rejecting the exemption or if the Arbitration Board does not decide on the exemption within 30 days after the request for exemption has been filed, request in the following 30 days from the moment of the expiry of that deadline that the Board specified in Article 477, paragraph 3 of this Law decide on the exemption.

2. Jurisdiction of Arbitration Board

Article 481

Arbitration Board may rule on its own jurisdiction, including any objections with respect to the existence or the validity of the arbitration agreement. For that purpose, the arbitration clause that forms integral part of a contract shall be treated as an agreement independent of the other provisions of the contract. A decision by the Arbitration Board that the contract is null and void shall not entail *ipso iure* the invalidity of the arbitration clause.

Objection that the Arbitration Board does not have jurisdiction shall be raised by the defendant not later than the period for submission of the response to the complaint. Objection that the Arbitration Board has exceeded the scope of its powers shall be raised as soon as the matter alleged to be beyond the scope of its powers is raised during the arbitration procedure. If the Arbitration Board believes, in either case, that the delay is justified it may allow subsequent submission of objection.

Arbitration Board may rule on an objection referred to paragraph 2 of this Article either as a preliminary matter or decision on the main subject matter. If the arbitration Board rules as a preliminary matter that it has jurisdiction any party may request, within 30 days after having received the decision, from the Board specified in Article 477, paragraph 1 of this Law to decide on the matter.

ARBITRATION PROCEDURE

1. Equal Treatment of Parties

Article 482

Parties shall be equal in the procedure before an Arbitration Board.

Parties shall be entitled to respond to statements and claims of their adversary.

The Arbitration Board may not impose coercive measures or penalties on parties.

2. Place of arbitration

Article 483

Parties are free to agree on the place of arbitration.

Failing such agreement, the place of arbitration shall be determined by the Arbitration Board having regard to the circumstances of the dispute, including the convenience of a specific place for parties.

If the place of arbitration is not determined pursuant to paragraphs 1 and 2 of this Article, the place of arbitration shall be considered to be the place designated in the award as the place where the award was made.

Unless otherwise agreed by parties and notwithstanding provisions of paragraph 1 and 2 of this Article, the Arbitration Board may meet at any place it considers appropriate for consultation among its members or for presentation of evidence.

Rules of Procedure

Article 484

If it is not in contravention with provisions of this Law, parties are free to agree upon the rules of the procedure that the Arbitration Board shall obey either by setting them by themselves or under this Law or by referral to some other rules or in other appropriate manner.

Failing such agreement the Arbitration Board may, if it is not in contravention with provisions of this Law, conduct the procedure as it deems appropriate. Powers conferred upon the Arbitration Board include the power to determine rules of procedure either independently or under this Law or by reference to a set of rules or in other appropriate manner and also the power to determine admissibility, relevance and weight of any proposed and presented evidence.

Commencement of Arbitration Procedure

Article 485

Unless otherwise agreed by parties, the arbitration procedure shall commence:

1) on the day when the Arbitration Board receives the complaint if the arbitration is conducted before the permanent Arbitration Board;

2) on the day when the defendant receives notification that the adverse party intends to bring the dispute before the arbitration with the advice that it has appointed the arbitrator or proposed a single arbitrator, inviting him/her to appoint another arbitrator or to declare himself/herself about the proposed arbitrator if the procedure is conducted before *ad hoc* Arbitration Board.

Language

Article 486

Parties are free to agree on the language or languages to be used in the arbitration procedure. Failing such agreement, the Arbitration Board shall determine the language or languages to be used in the procedure. This agreement between parties or determination by the Arbitration Board, unless otherwise specified therein, shall apply to any written statement of parties, any hearing and decision or other communication by the Arbitration Board.

Arbitration Board may order that any written evidence be accompanied by translation into the language or languages agreed upon by parties or determined by the Arbitration Board.

Until the language of the procedure has been determined either in agreement between parties or by the decision of the court, all pleadings may be submitted in the language of the main contract or language of the arbitration agreement or in the language that is in official use in the court that would have been competent if the arbitration agreement has not been concluded.

Delivery

Article 487

Unless otherwise agreed by parties, any pleadings shall be deemed to have been delivered on the day when it is delivered to the mailing address of the addressee or to the person designated to receive pleadings.

Mailing address is the address at which the addressee regularly receives mail. If the addressee has not expressly defined any other address or if the circumstances of the case do not indicate otherwise, the mailing address shall be the address of the seat the addressee, his/her temporary place of residence or the address referred to in the main contract or in the arbitration agreement.

If none of the addresses referred to in paragraph 2 of this Article is known, pleadings shall be deemed to have been served on the day when its delivery has been attempted to the last known address, provided that they have been properly forwarded by registered mail with return receipt or in any other way that may provide evidence of attempted delivery.

Pleadings shall be deemed to have been delivered if the addressee to whom delivery was attempted in the above described manner refuses to receive the writ.

Provision of paragraph 1 of this Article shall not apply to delivery of pleadings in court procedure.

Complaint and Response to the Complaint

Article 488

Unless otherwise agreed by parties, the plaintiff shall in his/her complaint state the facts supporting his/her claim, disputed matters and statement of claims, while the defendant in his/her response to the complaint shall state his/her defense with a view to the statements, motions and requests of the plaintiff. Parties may submit with their pleadings all documents they consider to be relevant or may add a reference to the documents or other evidence they intend to submit.

Unless otherwise agreed by parties, either party may amend or supplement his/her complaint or response to the complaint during the course of the arbitration procedure, unless the Arbitration Board considers it inappropriate to allow such amendment having regard to the delay it may cause.

Hearings and Written Procedure

Article 489

Unless otherwise agreed by parties, the Arbitration Board shall decide whether to schedule and hold oral hearings or the presentation of evidence or whether the procedure shall be conducted on the basis of documents.

Unless the parties have agreed that no hearings shall be held, the Arbitration Board shall hold such hearings at a later stage of the procedure if so requested by a party.

The parties shall be given sufficient advance notice of any hearing of the Arbitration Board for the purpose of inspection of goods, other property or documents.

All pleadings, documents or other information supplied to the Arbitration Board by one party shall be communicated to the other party. Any expert finding and opinion or document on which the Arbitration Board may rely in rendering its decision shall be communicated to each of the parties.

Unless otherwise agreed by parties, the arbitration procedure is not public.

Default of Party

Article 490

Unless otherwise agreed by parties and if the plaintiff does not file complaint in accordance with provisions of Article 488 paragraph 1 of this Law, the Arbitration Board shall suspend procedure.

Unless otherwise agreed by parties and it without stating justified reasons:

1) the defendant fails to submit his/her response to the complaint in accordance with provisions of Article 488, paragraph 1 of this Law, the Arbitration Board shall continue the procedure whereby it shall not be deemed that default means acceptance of defendant's statements;

2) any party fails to appear at the hearing or to produce documents within the deadline provided for their production, the Arbitration Board may continue the procedure and render the decision on the basis of the results of procedure and evidence at its disposal.

Witness

Article 491

As a rule, witnesses shall be interrogated at the main hearing.

Subject to their consent, witnesses may be examined outside the main hearing. The Arbitration Board may also request from witnesses to answer questions in writing within a certain period of time.

Expert Witness

Article 492

Unless otherwise agreed by parties, the Arbitration Board may:

1) appoint one or more experts witnesses from whom it will require finding on the facts to be determined and opinions on matters to be considered;

2) require a party to give the expert witness any relevant information or provide access to any relevant documents, goods or other property for his/her inspection.

Unless otherwise agreed by parties, if the party so requests or if the Arbitration Board considers it necessary, the expert witness shall after delivery of written or oral finding and opinion also participate at the hearing where parties shall have the opportunity to put questions to him/her.

Provisions of Article 69 of this Law shall apply accordingly to the exemption of expert witnesses.

Applicable Law

Article 493

The Arbitration Board shall decide in accordance with the rules of law chosen by parties as applicable to the settlement dispute.

Failing any designation by the parties under paragraph 1 of this Article, the Arbitration Board shall apply the law that it considers to be most closely connected with the dispute.

The Arbitration Board shall decide *ex aequo et bono* only if the parties have expressly authorised it to do so.

In all cases, the arbitration judge shall decide in accordance with provisions of the contract or shall take into account the trade customs.

Rendering Decision in Panel

Article 494

Unless otherwise agreed by parties, the Arbitration Board shall render any decision by a majority of votes.

If a necessary majority of votes may not be achieved, Arbitration Board shall continue deliberations on reasons for each opinion and if after that the majority still cannot be achieved the award shall be rendered by the President of Arbitration Panel.

President of the Panel may, outside the session of the Panel, independently decide on matters regarding conducting the procedure provided that it is not in contravention with agreement between parties and decisions of the Panel.

Certain fact-finding activities may be entrusted with individual members of the Panel if so decided by the arbitration Panel.

Settlement

Article 495

If parties settle the dispute during arbitration procedure the Arbitration Board shall suspend the procedure upon their request, unless the parties request that award is rendered on the basis of settlement.

Arbitration Board shall not render award on the basis of settlement if it finds that the substance of settlement is in contravention with the public order of the Republic of Montenegro.

Award on the basis of settlement shall be rendered under provisions of Article 496 of this Law and shall have legal force and effect of a judgment.

Award

Article 496

Unless otherwise agreed by parties, Arbitration Board may render partial and interim awards. Partial award shall be considered an independent judgment.

Award shall be rendered in the place of arbitration.

Award shall be rendered in writing. It shall contain reasoning unless parties agreed that reasoning is not necessary or if the award has been rendered on the basis of settlement of parties under Article 495 of this Law.

The award shall indicate the date and place it has been rendered.

Article 497

The original award and all transcripts thereof shall be signed by sole arbitrator or members of the Panel of arbitrators. The award shall be valid even if arbitrators failed to sign it provided that it was signed by the majority of arbitrators and that the omission of a signature is stated in the award.

Awards rendered by permanent Arbitration Board shall be delivered upon the parties by this Board. In all other cases, the delivery of the award to the parties shall be conducted by the Board defined in Article 477, paragraph 3 of this Law.

Article 498

Original award and proof of delivery shall be kept with the Board defined in Article 477, paragraph 3 of this Law, and if the award has been rendered by permanent Arbitration Board than they shall be kept with this Board.

Final and Enforceable Award

Article 499

Unless otherwise agreed by parties, the award of the Arbitration Board shall have, in respect of the parties, the force of final and enforceable court judgment.

At the request of the party, the Board under Article 477, paragraph 3 of this Law shall place the statement of final and enforceable effect on the transcript of award. Permanently appointed Boards shall place the statement of final and enforceable effect on their awards.

Conclusion of the Procedure

Article 500

The procedure is terminated by the final award on the matters that have been decided on.

The procedure may also be terminated by the conclusion of the Arbitration Board if:

1) the plaintiff withdraws his/her claim, unless the defendant objects thereto and the Arbitration Board recognizes a legitimate interest of defendant in obtaining final award in the dispute;

2) the parties agree on the conclusion of the procedure;

3) the Arbitration Board finds that the continuation of the procedure has for any other reason become unnecessary or impossible.

Mandate of the Arbitration Board terminates with the conclusion of the arbitration procedure except in cases under Articles 501, 502, 503, paragraph 3, 507, paragraph 2 and 508 of this Law. In such cases the mandate shall be terminated when the respective decision is rendered.

Supplemental Award

Article 501

Unless otherwise agreed by parties, each party may within 15 days of the receipt of the award and with notice to the other party request from the Arbitration Board to render supplemental award as to the claims presented in the arbitration procedure which were not decided by Arbitration Board in its decision.

If the Arbitration Board considers the request to be justified it shall render the supplemental award.

Provisions of Article 496 and 497 of this Law shall apply to such supplemental award.

Correction and Interpretation of Award

Article 502

Within 15 days of receipt of the award, unless another period of time has been agreed by parties, one of the parties, upon the notice to the other party, may request the from Arbitration Board to:

1) correct any errors in the computation, handwriting or typographical errors or any error of similar nature in the award;

2) give an interpretation of a specific point or part of the award.

If the Arbitration Board considers the request to be justified, it shall make the correction of the award or provide the interpretation which shall form integral part of the award.

The Arbitration Board may correct any error of the type referred to in paragraph 1, item 1 of this Article on its own initiative within 15 days of the date of the award.

Provisions of Article 496 and 497 of this Law shall also apply to the correction or interpretation of award.

Costs of Arbitration Procedure

Article 503

At the request of the party, the Arbitration Board shall determine in the award or decision for the conclusion of the procedure which party and in which proportion shall reimburse the other party the necessary costs of arbitration, including costs of representation and remuneration of arbitrators and bear his/her own expenses.

The Arbitration Board shall decide on the costs of the procedure according to its own evaluation, taking into account all circumstances of the case and particularly outcome of the dispute.

If the Arbitration Board fails to decide on costs or if such decision is possible only after conclusion of the arbitration procedure, a separate decision shall be rendered on the costs of procedure.

LEGAL AID OF THE COURT IN PRESENTATION OF EVIDENCE

Article 504

The Arbitration Board or one of the parties, with prior consent of the Arbitration Board, may request from the competent court to provide legal aid in presentation of certain evidence which

may not be presented by the Arbitration Board on its own. The provision of this Law related to presentation of evidence before the requested judge shall apply to the procedure of presentation of evidence.

LEGAL REMEDY AGAINST THE AWARD

1.Complaint for Setting aside the Award

Article 505

Arbitration award may be contested by the complaint for setting aside.

Interim award may be contested only by the complaint for setting aside filed against the award which concludes the procedure upon request on the basis of which it has been rendered.

No other legal remedy before the court against award of Arbitration Board shall be allowed.

Article 506

Award may be set aside by the Board specified in Article 477, paragraph 3 of this Law only if:

1) the party filing the complaint furnishes proof that:

-the arbitration agreement under Article 474 of this Law was neither concluded nor valid;

-the composition of the Arbitration Board or arbitration procedure have not been in line with provisions of this Law or agreement between parties which might have affected substance of the award;

-the party to the procedure was incapable of concluding the arbitration agreement or to be a party to dispute or to be duly represented;

- the party filing the complaint for setting aside the award was not given proper notice of the commencement of the arbitration procedure or was illegally prevented from presenting his/her case before the Arbitration Board;

-the award fails to contain reasoning or signature in accordance with provisions of Articles 496 and 497 of this Law;

- award refers to the dispute not contemplated by arbitration agreement or not falling within its provisions or contains decisions on matters beyond the scope of arbitration agreement, provided that the decision on matters submitted to arbitration may be separated from those not so submitted, and only that part of the decision containing provisions regarding matters that were not brought before arbitration may be set aside;

2) the court finds, even if a party has not raised these grounds, that the award is in conflict with the public policy of the Republic of Montenegro.

Article 507

The complaint for setting aside may be filed within three months from the date of delivery of award or if the complaint has been filed in one of the cases under Article 501 or 502 of this Law, from the date on which the party filing the complaint received the decision of the Arbitration Board on either of the requests.

When requested to set aside the award the court may, where appropriate and if so requested by the party, suspend the setting aside procedure for a period of time determined by it in order to give the Arbitration Board an opportunity to resume the procedure or to take such other actions which could eliminate the grounds for setting aside the award.

If the parties in the dispute without international element expressly so agree in the arbitration agreement, the judgment may also be contested by complaint on the grounds that the party applying for setting aside has learned new facts or has the opportunity to present new evidence on the basis of which the award more favorable to him/her could be rendered if these facts would have been known or evidence presented in the hearings that preceded rendering the contested award. This basis may be raised only if the applying party could not have used them in the arbitration procedure for reasons that were not his/her fault.

Parties may not waive in advance their right to contest the award by complaint for setting aside.

2. Arbitration Procedure after Setting aside the Award

Article 508

If the award rendered on the basis of a valid arbitration agreement not specifying the names of the arbitrators has been set aside on the grounds other than those related to existence or validity of the arbitration agreement, such agreement shall be valid legal basis for new arbitration in the same dispute. In case of doubt, at the request of the party, the court may render a separate decision to this effect.

When the court requested to set aside the award finds it possible and justified it shall, at the request of one party and regarding after setting aside the award, refer the case to the Arbitration Board for reconsideration.

In all other cases, a new arbitration in the same dispute shall be possible if the parties conclude a new arbitration agreement after the setting aside the award.

PART FIVE

TRANSITIONAL AND FINAL PROVISIONS

Article 509

If the first instance judgment or ruling on conclusion of the procedure before the first instance court has been rendered before beginning of the application of this Law, the further procedure will be conducted in accordance with regulations that were in force so far.

On the day of coming into force of this Law, the procedure which is conducted in a temporary halt shall continue accordance with this Law.

If the first instance decision referred to in paragraph 1 of this Article is reversed before the beginning of the application of this Law the further procedure will be conducted in accordance with this Law.

If the request for review has been submitted against the second instance judgment in procedure which was initiated before the beginning of the application of this Law the further

procedure will be conducted in accordance with rules of civil procedure which were in force until the beginning of application of this Law.

After the beginning of the application of this Law, request for protection legality regarding final and enforceable court decision may be filed only in accordance with the provisions of this Law.

If the complaint has been filed before the beginning of application of this Law, provisions of Article 339 of this Law shall not apply in the procedure, instead the conditions for rendering the default judgment shall be evaluated in accordance with the regulations which were in force so far.

If the preliminary hearing or main hearing has been held before the beginning of the application of this Law, parties may state new facts and present new evidence at the latest on the first deliberation for the main hearing after the beginning of the application of this Law.

Article 510

Provisions of this Law concerning arbitration procedure shall apply to the arbitration that is agreed upon after the beginning of the application of this Law.

Article 511

On the day of beginning of the application of this Law, the Law on Civil Procedure shall cease to be in force on the territory of the Republic of Montenegro (Official Gazette of the Socialist Federal Republic of Yugoslavia 4/77, 36/77, 36/80, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91 and Official Gazette of the Federal Republic of Yugoslavia 27/92, 31/93, 24/94, 12/98, 15/98 and 3/2002).

Article 512

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of the Republic of Montenegro and it shall apply three months after its entry into force.