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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT AMENDMENTS
TO THE CIVIL AND CRIMINAL
PROCEDURE CODES
OF ALBANIA**

ASSEMBLY**DRAFT LAW****ON AN ADDITION AND AMENDMENTS TO LAW NO. 7905 DATED 21. 03. 1995, "CODE OF CRIMINAL PROCEDURE OF THE REPUBLIC OF ALBANIA", AS AMENDED**

Pursuant to article 81/2, letter "d" and 83/1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY
OF THE REPUBLIC OF ALBANIA
DECIDED

The following amendments are made to Law No. 8116 dated 29. 03. 1996 "Code of Civil Procedure of the Republic of Albania":

Article 1***Article 341/1 is added after article 341 to read as follows:***

1. If a lawyer or attorney is not present during the court proceedings without any reasonable cause or unfairly prevents or delays the normal proceedings of the hearings, the Court, at the request of the party or parties involved in the trial, or *ex officio*, after hearing the lawyer or the prosecutor determines whether there has been a barrier to take part, a lack or delay of the Court's normal proceedings was without reasonable cause. The presiding judge may impose a fine of up to 50 000 ALL. The fine is determined in proportion to the harm caused by failure to take part, from improper obstruction or delay. In any case, the fine shall be notified to the chamber of advocates.

2. Every decision taken under paragraph 1 of this Article is an executive title. Against any decision taken under this Article may be appealed within 15 days to the Court of Appeal, with the exception of decisions taken by the Supreme Court. Such an appeal, unless otherwise ordered by the Court of Appeals will not act as an extension of the execution of the decision. "

Article 2

Article 432/1 is added after article 432 to read as follows:

Article 432/1

All decisions rendered by the appeal court may be appealed to the Supreme Court, with the exception of:

- a) Decisions on suspension and deferral of the decision enforcement, according to article 59 of the Criminal Code and article 476 of this Code.
- b) Decisions ruling the annulment of decision and cease of the case, when there are grounds not allowing the initiation or continuity of the proceeding or when the guilt of the defendant according to article 428, letter "c" is not proven.
- c) Decisions ruling the annulment of decision and return of acts in accordance with article 428, letter "ç".
- d) Decisions taken on coercive measures of personal security, according to articles 249/8 and 249/10 of this Code.
- e) Decisions regarding the release on parole, according to article 64 of the Criminal Code and article 477 of this Code.

- f) Decisions regarding the replacement of imprisonment sentence with other measures during the sentence serving term, provided for in articles 58-65/a of the Criminal Code.
- g) Decisions that are challenged during the stage of enforcement of final court decisions in accordance with the provisions of article 470 to Article 480 of this Code.
- h) Decisions on cease of criminal case according to article 385 of this Code.
- i) Decisions regarding the conservative and preventive attachment provided for in articles 270-276 of this Code.
- j) Decisions taken on the extension of time limits of pre-trial investigation, according to article 325 of this Code.
- k) Decisions taken on the request for the exclusion of judge, according to article 22/4 of this Code.

Article 3 Transitional provisions

Article 2 of this law is applicable only for recourses registered after the entry into force of this law. Court cases that are pending or are pending, will continue to be reviewed by the Court, under the law of the time of submission of recourse.

Article 4

This law shall enter into force 15 days after its publication in the Official Journal.

SPEAKER

ILIR META

EXPLANATORY REPORT

“ON AN ADDITION TO LAW NO. 7905 DATED 21. 3. 1995, “CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA”, AS AMENDED

It follows that a number of about 12 thousand recourses is registered and filed at the Supreme Court and this number has increasingly grown. In these circumstances, regardless of the division in the respective Sections/Colleges, the (insufficient) number of the Supreme Court judges supported by a qualified staff not only cannot afford the review of those recourses within a reasonable time limit but can neither properly accomplish the constitutional duty for the unification and change of the judicial practice. On the other hand, Recommendation (2010) 12 of the Committee of Ministers of the Council of Europe shifted the focus, inter alia, on the obligation of member states to enable their local courts the functioning in compliance with the standards established under article 6 of the European Court of Human Rights.

Therefore, it has arisen the need for launching concrete measures to be approximated to the current legislation, proposing amendments to the provisions of Criminal Procedure Code.

We cannot underestimate in this process the confidence of most of the litigants in the legal inspection by Supreme Courts in cases brought for review by the appeal court. Considering this aspect as a broader guarantee for the fair resolution of judicial cases, the legal initiative for the limitation of recourses filed with the Supreme Court should be carefully approached,

particularly in those cases which by their nature, should not be tried before the Supreme Court.

This draft law has no additional financial effects on the state budget.

1. Excerpts from the Law no. 7895, of 27 January 1995 “The Criminal Code of the Republic of Albania”, as amended.

**Article 58
Semi-freedom**

For sentences up to one year of imprisonment, the court, due to the obligations of the punished person in relation to work, education, qualification or professional training, essential family responsibilities or the need for medical treatment or rehabilitation, may decide the execution of the sentence with imprisonment in semi-freedom.

The sentenced person that serves the sentence in semi-freedom is obliged to return to prison, after carrying out responsibilities outside of prison, within the deadline established by the court. When the sentenced person does not fulfill the obligations according to this article, article 62 of this Code is implemented.

**Article 59
Suspension of the execution of an imprisonment sentence and placing of the sentenced person under probationary.**

Due to the low dangerousness of the person, his/hers age, health and mental condition, life style, and the needs especially of those related to the family, education or work, the circumstances under which the criminal act was committed as well as the conduct of the person after the committal of the criminal act, the court, when rules for a sentence with imprisonment for up to five years, may order the convict to keep contacts with the probationary service and be placed in probationary, by suspending the sentence execution, with the condition that during the probationary period, he/she does not commit another criminal act. The court orders that the defendant fulfills one or more obligations, provided for in the article 60 of this Code.

The probation period extents from eighteen months to five years. If the convict doesn't keep in touch with the probationary service or doesn't fulfill the obligations provided for in the article 60, as ordered by the court, the later decides the replacement of the first sentence with another sentence, prolongation of the deadline, within the probationary period, or revocation of the suspension of the decision execution.

**Article 64
Early Release on parole**

The prisoner could be released earlier on parole from serving the sentence only for specific reasons, if by his behavior and work he demonstrates that by the time served, the purpose of his education is fulfilled, and when he has spent:

- no less than half of punishment time given for criminal contraventions;
- no less than 2/3 of the punishment given for committing crimes punishable by imprisonment up to five years;
- no less than $\frac{3}{4}$ of the punishment for crimes punishable by imprisonment from five to twenty five years;

In the time spent in prison, the time reduced by amnesty or pardon is not counted.

It is not allowed to release early on parole a recidivist for crime committed with intent as well as for the convicts for commission of the criminal offences provided for in Article 78/a, 79/a, 79/b, 79/c, or paragraph three of Article 100.

Early release on parole is revoked by the court, when the convict sentenced for an intentionally committed crime, during parole period, commits another intentional criminal act; in this case, the provisions on unification of punishments shall be applied.

Article 65 / a
Period safety

The court, in rendering a decision, decides the appointment of a security period, during which the application of Article 64 of this Code is not allowed, in cases when one of the following circumstances:

- a) criminal acts, the measure of punishment which is over five years;
- b) criminal act is committed with ferocity and cruelty;
- c) when the offense is committed against children, pregnant women or people who, for various reasons, can not be protected;
- d) when the offense is committed by taking advantage of family or cohabitation;
- d) when the criminal offense is driven by motives related to gender, race, religion, nationality, language, political opinions, religious or social.

Period of security extends to the deadline by three-quarters of the sentence imposed by the court until the full length of the criminal sentence.

2. Excerpts from the law no. 7905 dated 21.03.1995 “On the Criminal Procedure Code of the Republic of Albania”

Article 22
Ruling on a disqualification petition

4. The ruling made in compliance with the above-mentioned paragraphs shall be notified to the judge, whose disqualification was requested, the prosecutor, the defendant and private parties. Such ruling may be appealed against to the Supreme Court.

Article 249
Appeal against remand orders

1. Within ten days from the execution or service of notice of the court decision, which issued or rejected a remand order, the prosecutor, defendant or his defense counsel may appeal to the highest court.
2. In respect of the defendant who has absconded, the time limit starts to run from the date of service of notice according to article 141.
3. The application is filed with the secretariat of the court that issued the decision appealed, which is bound to transmit the documents to the Court which will hear the appeal within 5 days.
4. The prosecutor, defendant and his defence counsel are notified on the hearing at least three days before the date specified.
5. The application is heard within 10 days from receiving the documents.
6. The court decides, as the case may warrant, to overrule, alter or approve the decision, even on different grounds from those presented or those stipulated in the reasoning part of the decision.
7. When the decision is not announced or enforced within the specified time limit, the writ, based on which the coercive remand order has been issued becomes void.
8. An appeal may be made to the Supreme Court against the decision of the Court of Appeal for contravention of law.
9. On the expiry of six months from the enforcement of the decision of arrest, the defendant and his defence counsel may appeal to the highest court.
10. The Supreme Court rules on within fifteen days from receiving the documents.

Article 270
Conditions and effects of the order

1. When there are reasonable grounds to think that there is no guarantee for the payment of fine sentence, expenses of the proceedings and any other obligation to the state property, the prosecutor request the attachment of the defendant's movable or immovable property or sums of money or items that others owe him, within the boundaries that law permits their sequestration.

2. The plaintiff may request the attachment of the property of the defendant or the person liable to a civil claim, under the conditions provided for by paragraph 1.

3. Property attachment issued on the request of the prosecutor is also applicable to the person liable for a civil claim.

Article 271
Court decision on attachment

1. Property attachment is ordered on the decision of the competent court.

2. When a decision in the first instance court has been issued, the property attachment is ordered before the documents are transferred to the court of appeal.

3. The property attachment order is enforced by court bailiff according to the rules prescribed by the Civil Procedure Code.

4. The property attachment ceases to have effects when the decision of acquittal or dismissal of the case becomes final.

Article 272
Offer of security for the obligation

1. When the defendant or the person sued under a civil claim offers an appropriate legal means to guarantee the obligation (pawn, guarantee, deposit, charge) the court does not order the property attachment or revokes it and assigns the mode of performing the obligation.

2. When the offer is made alongside the appeal, the court revokes the property attachment order if it deems that the offer of guarantee is in proportion to the value of the property attached.

Article 273
Execution of attachment order

1. The property attachment order is converted into executable attachment order when the fine sentence or the order compelling the defendant and the person liable under a civil claim for reimbursement of the damage, becomes final.

2. Mandatory execution of the property attached is done according to the rules provided for under Civil Procedure Code. From the proceeds of sale of the property attached and from those means offered to guarantee the obligation are paid in order, payments belonging to the plaintiff for reimbursing the damage and legal expenditures, fine sentences, proceedings expenditures and any other payments in favour of the state.

**SECTION II
PREVENTIVE SEQUESTRATION**

**Article 274
Object of preventive sequestration**

1. When there is a danger that free possession of an item connected to the criminal offence may aggravate or prolong its consequences or facilitate the commission of other criminal offences, the competent court, on the application of the prosecutor, orders its sequestration by reasoned decision.

2. Sequestration may also be ordered against items, proceeds of the criminal offence and against any other kind of property that is permitted to be confiscated in conformity with Article 36 of the Criminal Code.

3. When the application conditions alter, the court, on the application of the prosecutor or interested person, cancels the sequestration.

**Article 275
Cessation of sequestration**

1. The court or prosecutor that issues the decision of acquittal or dismissal of the case, orders the return of sequestered items to the one to whom they belong, unless they [the items] must be confiscated because they have served or were assigned to commit a criminal offence or because they are a product or profit of the criminal offence.

2. When a decision of conviction has been issued, the effects of sequestration continue if the confiscation of the sequestered items has been ordered.

3. The sequestered items are not returned if the court decides to maintain the sequestration to guarantee the credits.

**Article 276
The appeal against the decision**

1. Whoever has an interest may appeal against the issuance or rejection of the sequestration order.

2. The appeal may be filed within ten days from the issuance of the decision or from the day the interested person receives knowledge of the sequestration.

3. The appeal is filed with the secretariat of the court which issued the decision.

4. The appeal does not suspend the execution of the order.

5. The court of appeal rules on the appeal within fifteen days from receiving the documents.

6. The court may decide, as the case warrants, the overruling, amending or approval of the decision appealed.

7. When the decision is not announced or executed within the specified time, the decision of sequestration ceases to have any effect.

**Article 325
The appeal against the prolongation of the time period of investigation**

1. The defendant and the injured have the right, within ten days from the notification, to appeal the decision of the prosecutor prolonging the investigations in the district court.

2. After hearing the defendant, the defence lawyer, the injured and the prosecutor the court, within ten days, shall examine the appeal.

3. If the court accepts the appeal, the investigations may not continue or may continue only for a time period fixed by the court itself.

4. The decision of the court may be appealed, but this does not suspend the execution of the decision.

Article 385 **Correction of the decision**

1. The court even *ex-officio*, proceeds with the correction of the decision when it must correct any material error.

Article 428 **Court of appeal decision**

1. The court of appeal, after examining the case, decides:

- a) the unchanging of the decision;
- b) the alteration of the decision;
- c) the cancellation of the decision and the dismissal when there are the cases which does not permit the initiation and the continuation of the proceedings or when the guilt of the defendant is not proved;
- ç) the cancellation of the decision and the restitution of the acts of the first instance court when the provisions regarding the requirements to be a judge in the concrete case, the number of the judges necessary for the constitution of the colleges defined in this Code, with the exercise of the prosecution by the prosecutor and his participation in the proceedings, with the participation of the attorney of the injured accuser and the defence lawyer of the defendant, the violation of the provisions for introduction of new accusations, are not observed and also in any case when special provisions specify the nullity of the sentence.

HEARINGS BY THE COURT OF ISSUES RELATED TO THE EXECUTION OF DECISIONS

Article 470 **Competent court for execution**

1. The court which has rendered the sentence is competent to examine the requests and claims related to its enforcement.

2. When the execution is related with several sentences rendered by various courts the competent court shall be the one, which has rendered the sentence that, has been the last to become final.

Article 471 **Court Procedure**

1. The court proceeds with the request of the prosecutor, the interested person or defence lawyer.

2. When the request is evidently groundless or it renovates a rejected request, based on the same grounds, the court, after hearing the prosecutor, declares it unacceptable by decision which is notified within five days to the interested person. The decision is subject to appeal.

3. Except for cases provided by paragraph 2 the court fixes the date of the hearing and notifies the parties and defence lawyers at least 10 days before it.

4. The hearing is held in compulsory presence of the prosecutor and defence lawyer. The interested party can be heard personally or in written form, if he requires it.

5. The court renders a decision, which is notified, to the parties and defence lawyers. The decision is subject to appeal, but it does not suspend the execution except when the court that has rendered it otherwise decides.

6. The minutes of the hearing is kept in summarized fashion.

Article 472

Suspicion on the physical identity of the imprisoned person

1. In case of uncertainty on the identity of the person arrested in order to enforce the sentence, the court interrogates him, performs the investigations necessary for his identification and takes decision which is notified to the interested person.

2. When it ascertains that he is not the person to be subjected to execution, the court orders his immediate release. In case the identity remains uncertain, it decides the suspension of the execution, the release of the prisoner and notifies the prosecutor to complete further investigations.

3. In case the error on the identity of the person is certain, the prosecutor orders his release and sends immediately the acts to the court.

Article 473

Mistaken name

1. When a person is sentenced instead of another person because of error relating to the name, the court decides the correction only in case the person who should be subjected to proceedings is cited as a defendant also with another name to appear before the trial. To the contrary, it is decided the review of the case according to the article 450 paragraph 1 letter 'c'. In any case, the execution against the person who is victim of miscarriage of justice is suspended.

Article 474

Several decisions on the same fact

1. In case several decisions are rendered against the same person for the same fact, the court orders the execution of the decision by which is expressed the lightest punishment, declaring the others as unexecutable. In case the main punishments are equal, the supplementary punishment shall be considered.

2. In case there are some decisions of dismissal or acquittal, the interested person indicates the decision to be executed and if he does not do this, the prosecutor in case of dismissal and the court in case of acquittal, order the enforcement of the most favourable decision.

3. In case of a decision of acquittal and of a sentence, the court orders the execution of the decision of acquittal, revoking the sentence, whereas in case of a decision of dismissal of the prosecutor and of a decision rendered in the trial, the court orders the execution of the decision rendered in trial.

Article 475

Joinder of sentences

1. In case of several decisions, taken in various proceedings against the same person, the injured or the prosecutor may request from the court to follow the rules of joinder of sentences.

Article 476

Suspending the execution of decision

1. The court which has rendered the sentence, upon request of the sentenced, the defence lawyer or prosecutor, may decide the postponement of the execution of the decision in following cases:

a) when the sentenced suffers a grave malady which does not permit the execution of the decision. The execution shall be postponed until the sentenced is recovered.

b) when the sentenced is pregnant or she has a baby under one year old. The execution shall be postponed until the child shall reach the age of one year.

c) when the immediate serving of the punishment may bring serious consequences to the sentenced or his family. The postponement of the execution in these cases may not exceed six months

d) in any other case evaluated by the court as particular, being postponed the execution up to three months.

2. Upon submission of the request, the court has the right to suspend the execution of the decision until that is examined.

3. The decision of the court is subject to appeal.

Article 477

Conditional release

1. The court of the place of the execution orders the release on bail and revokes it, according to the criteria provided by the Criminal Code.

2. The request may not be renewed if six months have passed from the day the decision rejecting the request has become final.

Article 478

Release of prisoner

1. The court of the place of the execution may decide the release of the prisoner when the continuation of the imprisonment may threaten his life.

Article 479

Revocation of the decision because of abrogation of the criminal offence

1. In case of abrogation or constitutional unlawfulness of the criminal provision, the court revokes the sentence declaring that the fact is not provided as a criminal offence. The same way is acted in case of dismissal or acquittal because the criminal offence no longer exists.

Article 480

Other powers

1. In the stage of the execution, the court is competent to decide the termination of the criminal offence after the punishment, the termination of the punishment, the confiscation or the restitution of confiscated objects, as well as for any case provided by law.

2. In case is verified that the criminal offence or the punishment have no longer exist, the court declares this even ex-officio, taking the respective steps.

ASSEMBLY

DRAFT LAW

ON AN ADDITION AND AMENDMENT TO LAW NO. 8116 DATED 29. 03. 1996, "CODE OF CIVIL PROCEDURE OF THE REPUBLIC OF ALBANIA", AS AMENDED

Pursuant to article 81/2, letter "d" and 83/1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY

OF THE REPUBLIC OF ALBANIA
DECIDED

The following amendment be made to Law No. 8116 dated 29. 03. 1996 "Code of Civil Procedure of the Republic of Albania":

Article 1

Article 168/1 is added after article 168 to read as follows:

2. If a lawyer or attorney is not present during the court proceedings without any reasonable cause or unfairly prevents or delays the normal proceedings of the hearings, the Court, at the request of the party or parties involved in the trial, or ex officio, after hearing the lawyer or the prosecutor determines whether there has been a barrier to take part, a lack or delay of the Court's normal proceedings was without reasonable cause. The presiding judge may impose a fine of up to 50 000 ALL. The fine is determined in proportion to the harm caused by failure to take part, from improper obstruction or delay. In any case, the fine shall be notified to the chamber of advocates.

2. Every decision taken under paragraph 1 of this Article, is an executive title. Against any decision taken under this Article may be appealed within 15 days to the Court of Appeal, with the exception of decisions taken by the Supreme Court. Such an appeal, unless otherwise ordered by the Court of Appeals will not act as an extension of the execution of the decision. "

Article 2

Article 452 is amended to read as follows:

Article 452

Decisions that may be subject to complaint/appeal

A recourse may be filed to the Supreme Court against all decisions rendered by the appeal court, with the exception of:

- 1) Decisions taken on cases for which the appeal court has ruled to annul the decision and remand the case for retrial to the first instance court, in cases provided for in article 467 of this Code.
- 2) Decisions taken on cases for which the appeal court has ruled to annul the decision and cease the case in accordance with article 466, letter "c" of this Code.
- 3) Decisions taken on cases for which the appeal court has ruled to annul the decision and cease the case in accordance with article 466, letter "ç" of this Code.
- 4) Decisions taken on co-owned property allotment according to the first paragraph, article 370 of this Code.

- 5) Decisions that are subject to a special appeal/complaint according to articles 202, 297, 299 and 317 of this Code.
- 6) Decisions taken on the judicial attestation of facts according to article 388 of this Code.
- 7) Decisions taken on cases regarding the objection of the judicial bailiff actions, according to article 610 of this Code.
- 8) Decisions taken on cases regarding the nullity of executive titles according to article 609 of this Code.
- 9) Decisions stemming from the working relations according to the Labor Code of the Republic of Albania.
- 10) Decisions related to the consequences of marriage dissolution according to articles 153-161 of the Family Code of the Republic of Albania.
- 11) Decisions taken in accordance with the applicable legislation on civil servant.

Article 3 Transitional provisions

Article 2 of this law is applicable only for recourses registered after the entry into force of this law. Court cases that are pending or are pending, will continue to be reviewed by the Court, under the law of the time of submission of recourse.

Article 4 Entry into force

This law shall enter into force 15 days after its publication in the Official Journal.

SPEAKER

ILIR META

EXPLANATORY REPORT “ON AN ADDITION AND AMENDMENT TO LAW NO. 8116 DATED 29. 3. 1996, “CIVIL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA”, AS AMENDED

The addition under the present draft law has a direct aim to improve the process of justice administration, being approximated to the standard set out in article 6 of the European Convention of Human Rights. Also, it has reflected the recommendation set by the progress report of 2013, which has brought to the attention of the Albanian Government the fact that although the EU Commission has acknowledged the amendments of 2012 to the law on lawyer's profession, the issue of the exercise of punishment by the judges against lawyers who are repeatedly absent in civil or criminal judicial hearings, is not addressed.

Accordingly, by maintaining its commitment to improve the national justice system, the Ministry of Justice has prepared this draft law, aiming to address the concerns reported by the international stakeholders, with the view of preventing delays of judicial processes but also reducing the number of recourses filed to the Supreme Court.

It follows that a number of about 12 thousand recourses has been currently registered with the Supreme Court and this number has increasingly grown. In these circumstances, regardless of the division in the respective Sections/Colleges, the insufficient number of the Supreme Court judges supported by a qualified staff not only cannot afford the review of those recourses within a reasonable time limit but can neither properly accomplish the constitutional duty for the unification and change of the judicial practice. On the other hand,

Recommendation (2010) 12 of the Committee of Ministers of the Council of Europe shifted the focus, inter alia, on the obligation of member states to enable their local courts the functioning in compliance with the standards established under article 6 of the European Court of Human Rights.

Therefore, it has arisen the need for launching concrete measures to be approximated to the current legislation, proposing amendments to the provisions of Criminal Procedure Code.

We cannot underestimate in this process the confidence of most of the litigants in the legal inspection by Supreme Courts in cases brought for review by the appeal court. Considering this aspect as a broader guarantee for the fair resolution of judicial cases, the legal initiative for the limitation of recourses filed with the Supreme Court should be carefully approached, particularly in those cases which by their nature, should not be tried before the Supreme Court.

This draft law has no additional financial effects on the state budget.

Articles of the Civil Procedures Code

b. Cessation of trial

Article 299

The court decides the cessation of trial when :

- a. none of the parties requests within six months the restart of the trial suspended on their request, when the court has not designated a next session in the decision of the suspension.
- b. the plaintiff renounces from the trial of the lawsuit;
- c. the cessation of the trial is expressly provided by law.

Article 317

Cases of issuing decisions of temporary execution

The decision of the court may be issued for temporary execution when it has been decided :

- a. the obligation for sustenance;
- b. on the retribution for work;
- c. on the return of possession of conjugal place of abode.

The decision may be issued for temporary execution also when due to the delay of execution the plaintiff may suffer important damage, which cannot be remedied or when the execution of the decision would become impossible or would be made exceedingly difficult. In this case the court may demand that the plaintiff give a guarantee.

Article 370

Stages of trial

The trial for the division of things in joint ownership and in inheritance in its first stage aims to investigate and determine the right of joint ownership of the parties, their belonging parts as well the things to be divided. After the court has acquired the necessary evidence, by an intermediate decision, it permits the division and determines the circle of joint owners, the things to be divided and the belonging parts of each of them.

Separate appeal is permitted against such decision, the presentation of which suspends the further continuation of trial.

Article 466 Decision of the Court of Appeal

Following the examination of a case, the Court of Appeal may rule to:

- a) endorse and sustain the decision of the First Instance Court;
- b) amend the decision;
- c) revoke the decision and dismiss the case;
- d) revoke the decision and order a retrial by the First Instance Court for cases provided by Article 467 of this Code.

Article 467 Order for retrial

The Court of Appeal shall revoke the decision of the First Instance Court and shall order the retrial of a case when:

- a) the First Instance Court has violated provisions on jurisdiction and authority;
- b) the composition of the panel was not regular or the decision was not signed by its member, or the principle of impartiality is infringed;
- c) the court has decided the dismissal of a case conflicting with the regulations defined in this Code;
- ç) the case was tried in the absence of participants involved in the process when they were unaware of the date of the trial.
- d) the involvement of parties in the trial process has not been stated correctly;
- e) the lawsuit, the court record, the appeal or any other documentation influencing the decision is missing or invalid;
- ë) there is a need to obtain a decisive evidence, the obtaining of which was difficult in the second level or the court was not pronounced on all the requests raised by the parties in the lawsuit and that constitute the object of the dispute between the litigating parties.

The First Instance Court during the retrial is obliged to follow the decision of the Court of Appeal regarding any procedural decisions decided in that.

The court, by means of an intermediate decision, may rule not to carry out specific actions, when, due to new circumstances emerging in the retrial, are deemed to be unnecessary.

A separate appeal can be made against this decision.

During retrial, invalidities declared in the previous trials, when the respective decisions have not been revoked. Claims must not differ from those accepted by decision of the Court of Appeal, except in circumstances where the claim is associated to the completion of tasks ordered by the Court of Appeal.

Article 467/a

Should the Court of Appeal revoke the decision, it cannot order the return for retrial, but shall examine the case as a First Instance Court.

When the decision is revoked due to non-compliance with the duties set by the highest court, without a specific decision taken in accordance with the Article 467 of this Code, the Court of Appeal, upon the request of parties, can transfer the fee of all costs incurred to the relevant adjudicating body.

Article 467/b

Should a court issue a just decision on a case outside its authority, and, the

authority of the court which is competent to try the case, was not surpassed, the Court of Appeal shall be entitled not to revoke the decision and shall only inform the respective court of the irregularity of its decision.

Article 609 **Invalidity of executive title**

The debtor may request to the competent court of the place of execution to be declared that the executive title is invalid or that the obligation does not exist or that it exists to a smaller amount or has increased subsequently.

When the executive title is a court decision or an arbitral award, the debtor may contest the execution of the title only for facts occurred after the issuing of those decisions.

In these cases, the court may decide to suspend the decision with or without a guarantee. When the executive title is an act to provide bank loans or an act to provide loans from non-banking financial institutions, the court may decide to suspend the execution, only with a guarantee and for a period not longer than 3 months, except when the court, within this term, takes a final decision to accept the claim. When the 3 months term expires or when the court, within this term, decides to refuse the claim or to dismiss its adjudication, the measure to suspend the execution of the decision is considered as not in force.

The court examines the requests, according to this article, within 5 days. A special appeal can be lodged against this decision of the court.

Article 610 **Objection to the action of the Bailiff**

Parties may file an appeal to the court responsible for the execution of the decision, against actions performed by the Bailiff or its refusal to perform an action, within five days from the performance or refusal to perform the action, when the parties were present in the performance of the action or if they have called to attend in other cases since the day of notification or the day of becoming aware of the action or of the refusal.

Against the actions of persons, judicial bailiffs who exercise the public activity of judicial enforcement service organised on private basis the debtor may lodge a complaint with the court where executive title is enforced, within 5 days from the performance of the action.

The appeal shall be examined by the court of the place of execution, which in cases it deems necessary, within 20 days, can also order the parties to attend.

The Bailiff is ordered to attend in the court in the capacity of the defendant.

The appeal against actions or refusals from the judicial bailiff does not suspend the execution, except when the court decides differently. When the executive title is an act to provide bank loans or an act to provide loans from non-banking financial institutions and the court has decided to suspend the execution of the decision, the suspension measure is considered as not in force after 20 days from the moment when the suspension decision is taken.

A special appeal may be lodged against the decision of the court.