

Prohibition of vacating first-instance judgments in small-value commercial disputes more than once

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Small-value commercial disputes are a special type of dispute for which the Law on Civil Procedure ("LCP") specifies a number of rules that differ from the rules of general civil procedure, in the interest of increased efficiency and cost-effectiveness of the procedure. Thus, in small-value commercial disputes the claim is not served on the respondent for a response, no preparatory hearing is held, the claim cannot be appealed for erroneous and incomplete determination as to the state of facts, and the deadline for an appeal is 8 days instead of 15. These are disputes in which the subject-matter jurisdiction lies with the Commercial Court, and in which the particulars of claim refer to a monetary claim not exceeding the dinar equivalent of EUR 30,000.00.

Although the LCP specifies a number of special rules to be applied to small-value commercial disputes, in applying one of these rules a legal inconsistency was noticed, requiring a final interpretation and clarification.

Article 383 of the LCP provides for an exception with regard to prohibition of vacating a judgment twice, as it specifies that the second-instance court (in this case the Commercial Court of Appeals) is to *schedule a hearing* and decide on the appeal and the parties' requests, if the judgment of the first-instance court (in this case the Commercial Court) in the same case has already been vacated once, except in the case of judgments in small-value disputes.

On the other hand, Article 387 of the LCP specifies the opposite solution to the abovementioned provision, by forbidding the second-instance court. after the first-instance judgment has been vacated and a new judgment reached in the repeated procedure, from once again vacating the judgment and reverting the case to the first-instance court for retrial, should it find grounds for vacating, and imposing an obligation on the second-instance court to decide on the appeal and the parties' requests itself in such case, without specifying any exceptions.

Therefore, by specifying the above exception in Article 383 the LCP actually left room for conflicting interpretations regarding whether the prohibition of vacating first-instance judgments more than once is to be applied in small-value commercial disputes as well, and whether the second-instance court, after once vacating a first-instance judgment, has to decide on the appeal and the parties' requests itself, or may once again vacate the judgment and revert the case to the first-instance court to decide.

The above described dilemma was definitely resolved by the Supreme Court of Cassation, by its Decision R1 282/2014 dated 12 March, 2015, in which it took the final legal position that the prohibition of vacating twice a first-instance judgment and reverting the case to the first-

instance court to decide is to be applied in small-value commercial disputes as well, and that in such a case the second-instance court shall decide on the appeal and the parties' requests and reach a decision, but without holding a hearing.

From all of the above it can be concluded that the Supreme Court of Cassation took the position that the exception specified in Article 383 of the LCP refers solely to the possibility of scheduling a hearing in deciding on the parties' requests in a situation where the first-instance judgment has already been vacated once, but not to the possibility of vacating the judgment more than once. This legal interpretation has finally resolved the dilemma in favour of efficiency and cost-effectiveness of the procedure, legal certainty and the right to a trial within a reasonable timeframe, which is the precise legal purpose of regulating the procedure in small-value commercial disputes.

Djordje Novcic, Partner, JPM Janković Popović Mitić

Milica Zarkic, Associate, JPM Janković Popović Mitić