



# ICLG

The International Comparative Legal Guide to:

## **Class & Group Actions 2016**

**8th Edition**

A practical cross-border insight into class and group actions work

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# Macedonia

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## 1 Class/Group Actions

### 1.1 Do you have a specific procedure for handling a series or group of related claims? If so, please outline this.

According to Macedonian law, there are no specific procedures for handling a series of related cases.

The Macedonian civil procedure regulations contain provisions which permit group action cases or so-called joined actions claims. Namely, actions can be taken jointly by multiple plaintiffs or against multiple defendants, if the following conditions are fulfilled: (i) in view of the action/dispute the co-participants are in a legal community or their rights or obligations are arising from the same factual or legal basis; (ii) the subject of the action/dispute are claims or obligations that are based on an essentially identical factual and legal basis; and (iii) if the joined action is determined by other specific law.

In cases where there are multiple claimants, the claimants can appoint a so-called common representative to protect their rights in the procedure.

### 1.2 Do these rules apply to all areas of law or to certain sectors only e.g. competition law, security/financial services? Please outline any rules relating to specific areas of law.

The above mentioned rule for class/joined actions is based as a general rule, which applies to all areas of law that are handled in civil or administrative procedures. In addition, as an outline, the regulations for costumers' protection, regulations against discrimination and regulations for child protection further regulate group/joined actions suits with a few specific provisions for handling the procedure.

### 1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim leads to the determination of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?

According to Macedonia regulations, there are no specific rules in relation to the management of claims by means of class action. The

court decides on case-by-case basis and the decision in one case does not create a binding precedent for other similar cases.

In practice, however, it is very usual for similar claims to be decided in the same manner on the basis of previous identical decisions as established jurisprudence.

### 1.4 Is the procedure 'opt-in' or 'opt-out'?

There are no specific rules for the type of procedure; in such case the general rule stands that the parties can freely choose whether to be involved in the procedure. Even if the litigation is already initiated, it is a party's sole decision to be involved in the procedure as a plaintiff or defendant by giving consent.

### 1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

There is no limitation on the number of claims that can be managed under a sole procedure. But, according to the general procedure rule, there must be at least two claimants or defendants to be considered as a class/joined action.

### 1.6 How similar must the claims be? For example, in what circumstances will a class action be certified or a group litigation order made?

In order for several claims to be joined as a group/class litigation, the following conditions must be fulfilled: (i) in view of the action/dispute the co-participants are in a legal community or their rights or obligations are arising from the same factual or legal basis; (ii) the subject of the action/dispute are claims or obligations that are based on an essentially identical factual and legal basis; and (iii) if the joined action is determined by other specific law.

### 1.7 Who can bring the class/group proceedings e.g. individuals, group(s) and/or representative bodies?

According to the general procedure rule, a class/group proceedings can be brought by several (at least two) individuals/legal entities in accordance with the civil procedure regulations. In addition, the law on the protection of consumers allows bodies authorised by the government to protect consumers to initiate claims in front of the competent court for forbidding an activity that is considered acting against the regulations for the protection of consumers.

### 1.8 Where a class/group action is initiated/approved by the court must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action permitted or required? Are there any restrictions on such advertising?

If a class/group action has been initiated/approved, the court must inform only the claimants/participants in the procedure and deliver the summons to them for the first hearing. If the participants were duly informed, the court has no future obligation to inform them about the duration of the procedure, but the court has an obligation to deliver the decision from the class/group action to all of the claimants/participants.

There are no regulations on the advertising of the class/group action, but also there are no prescribed restrictions on that issue, so we can determine that the advertising of the class/group action is not forbidden.

### 1.9 How many group/class actions are commonly brought each year and in what areas of law e.g. have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Mass tort claims, e.g. disaster litigation; Environmental; Intellectual property; or Employment law?

At this moment there are no court or state statistics identifying the number of group/class actions brought before the courts. It is our opinion, however, that there are not many group/class actions brought in Macedonia each year.

### 1.10 What remedies are available where such claims are brought e.g. monetary compensation and/or injunctive/declaratory relief?

No special remedies are prescribed for group/class actions. Because group/class actions are handled the same as any other civil action, the remedies that are available can be: conduct a certain act; restrain from conducting certain acts; and/or monetary compensation, depending on the grounds of the group/class action.

## 2 Actions by Representative Bodies

### 2.1 Do you have a procedure permitting collective actions by representative bodies e.g. consumer organisations or interest groups?

According to Macedonian regulations, as a general rule collective actions can be initiated by multiple individuals/legal entities if they have a legitimate interest in the case.

The civil court may, as an exception, in certain procedures recognise the capacity of a party to certain forms of associations caring about the rights of a certain group of people/consumers (interest group). Also, in the regulations for consumers' protection, a state body or consumer organisation can bring a collective claim.

### 2.2 Who is permitted to bring such claims e.g. public authorities, state-appointed ombudsmen or consumer associations? Must the organisation be approved by the state?

The general rule is that collective actions can be initiated only by multiple individuals/legal entities if they have a legitimate interest in the case.

However, in certain cases collective actions can be brought by a representative body depending on the grounds of the collective action. For example, in the case of consumers' protection the action can be brought by a state body appointed by the government or a consumer organisation that has been approved by the state.

In cases encompassing the protection of children, an organisation, institution or association can join a civil proceeding where it is decided if a child is a victim of discrimination. In cases of protection against discrimination, an association, foundation, institution or other organisation can file a complaint and initiate a court procedure in order to act as co-litigant against the person who violated the right of the group.

### 2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law e.g. consumer disputes?

Representative actions might be brought in cases where the representative has a legitimate interest to be involved in a procedure, in accordance with the activity that that body or association is performing.

In accordance with the current regulations, in Macedonia these are the areas of the law where the rights of consumers, children or discriminated individuals are obstructed.

### 2.4 What remedies are available where such claims are brought e.g. injunctive/declaratory relief and/or monetary compensation?

In collective claims initiated by representative bodies, the available remedies are the same as any other civil action: conduct a certain act or restrain from conducting certain acts.

The right of monetary compensation is available only for individuals/legal entities whose rights were infringed and from which the individuals have sustained damages in a separate court procedure.

## 3 Court Procedures

### 3.1 Is the trial by a judge or a jury?

In accordance with civil procedure in Macedonia, in first instance court procedure the composition of the court depends on the value or the type of the case. The trial can be held by a sole judge or a council composed of one judge and two jurors.

In second or higher court procedure, the trial is held in front of a council composed of three or five judges, depending on the case.

### 3.2 How are the proceedings managed e.g. are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

There are no special courts/judges appointed to manage a group/class action court case. Group/class actions are handled the same as any other court case/litigation.

### 3.3 How is the group or class of claims defined e.g. by certification of a class? Can the court impose a 'cut-off' date by which claimants must join the litigation?

According to Macedonian law, there is no formal defining of the group by the court in order for the litigation to be considered as a



group claim e.g. certification of a class; the court simply affirms the joinder of actions.

The court cannot impose a ‘cut-off’ date by which claimants must join the litigation, but with the regulations of civil procedure it is prescribed that an interested party can join the procedure up until the conclusion of the main hearing by giving approval.

**3.4 Do the courts commonly select ‘test’ or ‘model’ cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can order preliminary issues do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?**

The courts in Macedonia do not apply “test” or “model” cases. The courts determine preliminary issues, such as whether the claim is admissible and whether the statement of a claim is in order, which are general requirements for all types of actions, not only for class actions. In Macedonian court procedure the court must address both the facts and the law issues in order to adopt a final judgment.

**3.5 Are any other case management procedures typically used in the context of class/group litigation?**

No, there are no typical procedures used in the context of class/group litigation.

**3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?**

According to Macedonia regulations, the burden of proof is on the claimant/parties in the procedure. The parties in the procedure have the right to present expert evidence, which must be in relation to the case and as evidence on the fact that needs to be proven.

**3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?**

As a general rule, neither factual nor expert witnesses are required to present themselves for pre-trial depositions or witness statements/expert reports to be exchanged prior to trial.

However, there is an exception, factual or expert witnesses are required to present themselves for pre-trial depositions if there is a justified fear that later execution will be difficult.

**3.8 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?**

In Macedonian law there are no regulations for disclosure of documentary evidence before court proceedings are commenced.

The claimants are required to present all of the evidence when the claim is filed or no later than the first hearing.

**3.9 How long does it normally take to get to trial?**

After the claim and the response to the claim are filed to the court, the court is obligated to appoint a pre-trial hearing or a first hearing,

depending on the case, no later than 50 days after the date when the response is received by the court.

**3.10 What appeal options are available?**

According to Macedonian regulations, the parties can appeal the decision of the primary courts in front of the appeal court, and if the parties are not satisfied with the appeal court’s decision they can appeal in front of the Supreme Court.

## 4 Time Limits

**4.1 Are there any time limits on bringing or issuing court proceedings?**

Yes, there are time limits on bringing a group/class action or issuing a court proceeding, which are set by different material laws depending on the grounds of the claim.

**4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the court have discretion to disapply time limits?**

The Macedonia Law on the Obligations prescribes a general limitation period of five years, after which date all claims should be extinguished. In addition, there are prescribed time limits for specific areas of the law and time limits that depend on the grounds of the claim. For example, there is a specific three-year limitation period applicable for claims for employee remuneration, compensations, claims for rents, interests, and other periodic payments.

Namely, the time limits are usually divided as objective or subjective terms. Objective terms are limited by a time period calculated from the crucial event (on the basis of which the claim can be brought) up to the maximum period to file the claim, and subjective terms are limited by a time period calculated from the day the claimant was aware of the crucial event up to the maximum period to file the claim.

The age and the condition of the claimant do not affect the calculation of any time limits and the courts have no discretion to display time limits set forth by the material law.

**4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?**

Acts such as concealment and fraud affect the running of time limits, since such act is considered as the crucial event (the date for the commencement of the time limit). This means that, with these acts of concealment and fraud, the claimant becomes aware of the crucial event.

## 5 Remedies

**5.1 What types of damage are recoverable e.g. bodily injury, mental damage, damage to property, economic loss?**

In accordance with Macedonian law, damage is defined as a reduction of one’s property (ordinary damage) and preventing its increase (lost benefit), as well as violation of personal rights (pecuniary damage).

All of the types of damage defined in the Macedonian Obligations Act (bodily injury, mental damage, damage of property, economic loss, etc.) are recoverable in the case the damaged party can prove that the damage was caused by the sued party.

**5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?**

According to Macedonian law, only damage that has occurred can be recovered. So damages with respect to the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury to the claimant, but may do so in future, cannot be recovered.

**5.3 Are punitive damages recoverable? If so, are there any restrictions?**

Macedonian law does not recognise punitive damages and Macedonian courts do not award punitive damages to a claimant.

**5.4 Is there a maximum limit on the damages recoverable from one defendant e.g. for a series of claims arising from one product/incident or accident?**

There is no maximum limit on the damage that can be recovered from one defendant.

**5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?**

In group/class actions damages are quantified directly by the judge. Damages will be directly quantified among the members of the group, based upon criteria provided in the claim by the members. The court will not decide the damages to be compensated to the group as a whole.

**5.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required?**

After civil proceedings are initiated, the parties in the proceeding before the civil court may conclude a settlement of the dispute (court settlement). No approval of the court is required for the court settlement. During the procedure the court is obligated to instruct the parties to consider the possibility of court settlement and will help to conclude a settlement if necessary.

## 6 Costs

**6.1 Can the successful party recover: (a) court fees or other incidental expenses; and/or (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?**

The successful party can recover the court fees, as well as its own legal costs and other expenses, in proportion to the amount for which the claim is found successful, and only those costs which the court decides as necessary for conducting the procedure.

The 'loser pays' rule is the general rule in civil procedure regarding the reimbursement of the costs and expenses of the procedure.

**6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?**

As a general rule, the members of the group bear the expenses in equal parts. If there is a significant difference in terms of the shares in a dispute, however, the court will determine how much of the costs each member will bear, in proportion to their share.

The members of the group that are jointly responsible in the main work are jointly liable for the costs awarded to the opposing side. For costs resulting from separate civil actions of individual members of the group, the other members (individuals) are not responsible.

**6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?**

The general rule is that the party that withdrew from the claim is responsible for the costs made to the other side until the withdrawal, if any.

**6.4 Do the courts manage the costs incurred by the parties e.g. by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?**

The courts do not manage the costs incurred by the parties. The parties pay the costs prior to any action taken before the court. There is no limit to the costs, but the litigation procedure must be taken by the principle of economic procedure, which means that the court is obliged to conduct the proceedings with less cost.

## 7 Funding

**7.1 Is public funding e.g. legal aid, available?**

There is no public funding available for class/group actions. Macedonian regulations prescribe provisions that govern exceptions to the obligation for payment of court fees, if the party, according to its general assets, is unable to bear these costs without detriment to its necessary support and the necessary support of his family.

There is a specific law for free legal services (free legal aid), by which in determined specific cases the individuals or groups can obtain legal advice or be represented by an attorney free of charge.

**7.2 If so, are there any restrictions on the availability of public funding?**

The restrictions on the availability of public funding, in the case the court decides to exempt a party from paying the court costs, depend on the material conditions of the party by which the individual or the group is unable to pay the costs of the litigation.

In the case of free legal aid services regulations, an application for legal aid under the provisions of the law shall be approved in all judicial and administrative proceedings, if it resolves the issue

of interest for legal aid. The issues referred (for which the party can seek free legal aid) are: the rights in the areas of social, health, pension and disability insurance; labour relations; and the protection of children and juveniles, victims of domestic violence, victims of criminal offences, and victims of trafficking and property tenure issues.

### **7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?**

A conditional or contingent fee is allowed and widely used by legal professionals. This fee is structured as a success fee, which the party/client pays only if there is a favourable result for his case. The contingent fee cannot be recovered by the 'loser party'.

### **7.4 Is third party funding of claims permitted and, if so, on what basis may funding be provided?**

There are no regulations in Macedonian law prohibiting third party funding claims. The funding of such claims can be provided on the basis of a mutual agreement between the claimant and the third party, as a contractual obligation outside the litigation procedure.

## **8 Other Mechanisms**

### **8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.**

Consumers' claims can be assigned to a consumer association or state authorised body and they can bring a claim in front of the competent state inspectorate. After the procedure is initiated, the parties submit proof of their claim and after the summation the inspectorate decides with a formal decision as to whether the consumers' rights are violated.

### **8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.**

In accordance with specific consumer group claims provisions in the Consumers' Protection Act, the only bodies that are authorised to initiate a procedure are the bodies authorised by the government at the minister of economy proposal.

Macedonian regulations do not recognise the possibility of consumers' claims being brought by a professional commercial claimant.

### **8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?**

Yes, criminal proceedings could be used to pursue civil damages claims, if such claim is brought within the ongoing criminal procedure.

But, with its decision the criminal court can decide not to act on the submitted damage claim and direct the members of the group or class to initiate a civil litigation procedure for the damages claims, as a separate procedure.

### **8.4 Are alternative methods of dispute resolution available e.g. can the matter be referred to an Ombudsperson? Is mediation or arbitration available?**

The parties can refer the matter to an Ombudsperson if their rights are violated by government bodies or legal entities with public authorisations. The parties also can agree on resolving the dispute through mediation or arbitration. However, in Macedonia the methods of mediation and arbitration are not yet sufficiently developed practices in the process of dispute resolution.

### **8.5 Are statutory compensation schemes available e.g. for small claims?**

In Macedonian legislation procedure there are no compensation schemes available.

### **8.6 What remedies are available where such alternative mechanisms are pursued e.g. injunctive/declaratory relief and/or monetary compensation?**

If alternative methods are pursued, the available remedies are the same as the remedies in ordinary court cases; namely, in the framework of mediation the parties can freely agree on any remedy considered as appropriate, and in the case of arbitration, all of the remedies applicable in an ordinary court case are appropriate.

## **9 Other Matters**

### **9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict 'forum shopping'?**

According to Macedonia regulations, residents from other jurisdictions can bring claims before Macedonian courts under certain cases prescribed by law (cases with an international element). Namely, the general rule is that the claim can be brought before Macedonian courts when the defendant party has domicile or residence, or if the legal person has its headquarters in the Republic of Macedonia.

Furthermore, within the law there are special prescribed cases when residents from other jurisdictions can bring claims before Macedonian courts, depending on the grounds of the claim. For example, parties who previously agreed the jurisdiction of a Macedonian court (contractual liability), in damages cases when the harmful consequence occurred in the territory of Macedonia, when the contractual obligation has to be fulfilled in Macedonia, when the property that is the subject of the dispute is located in Macedonia, when the criminal offence occurred in Macedonia, etc.

In Macedonia there are no direct rules restricting "forum shopping", but the court decides on the territorial jurisdiction *ex officio* and can refuse to consider the case if it fails to meet the criteria for territorial jurisdiction in Macedonia.

### **9.2 Are there any changes in the law proposed to promote class/group actions in Macedonia?**

At this moment in time the Macedonian government has not proposed or adopted any changes of the law in order to promote class/group actions in Macedonia.

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The partners of DDK have more than 15 years' law practice experience and have exceeded clients' expectations by providing sophisticated and efficiently managed legal services.

DDK has extensive experience in representing distinguished corporate clients such as banks, construction companies, IT and telecommunications companies, automotive companies, energy companies, agricultural companies, health institutions and physical persons in complex civil, bankruptcy and criminal litigation procedures in front of all instances of domestic courts and also in arbitration proceedings.



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