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The Right to Use Legal Remedies Against Court Decisions in Contested Procedure

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Article	Abstract
<p>Keywords: Contested Procedure; Court Decisions; Extraordinary Legal Remedies; Ordinary Legal Remedies; The Right to Use Legal Remedies.</p> <p>Article History Received: Nov 8, 2019; Reviewed: Jan 21, 2020; Accepted: Jan 29, 2020; Published: Jan 31, 2020.</p> <p>DOI: 10.28946/slrev.Vol4.Iss2.428.pp9-22</p>	<p>The purpose of this scientific paper is to handle in detail the main issues concerning the right to use legal remedies by the parties against court decisions. The right to use legal remedies against court decisions is recognized as one of the fundamental rights of litigants in the civil contested procedure. Due to the importance of using legal remedies in this procedure and other court proceedings, the right to use legal remedies is also foreseen by legal acts. We emphasize this because the right to use legal remedies is guaranteed by the Universal Declaration of Human Rights of 1948, by the European Convention on Human Rights of 1950. Also, the right to use legal remedies is guaranteed through the Constitution of the Republic of Kosovo of 2008 as one of the fundamental human rights. In contrast, the procedure, according to appealing means, has been regulated by the Law on Contested Procedure of Kosovo 2008. The main idea of this scientific paper is to clarify the right of parties to use legal remedies and what are legal remedies to this procedure. The results of handling consist of understanding the importance of legal remedies, in which cases legal remedies may be submitted, and their impact in exercising the right of litigants in order to provide protection to the legal interests of the parties. In this scientific paper have been conducted handlings concerning the right to use legal remedies, types of appealing means, ordinary legal remedies, and extraordinary legal remedies. This scientific paper is based on applicable legislation, judicial practice, and legal doctrine. In this paper are also given conclusions regarding the right to use legal remedies against court decisions in the contested procedure.</p>

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INTRODUCTION

In order to have full respect for fundamental human rights in court proceedings, it is inevitable that transparent and fair trial based on the basic principles of justice, it is essential to guarantee the use of legal remedies against court decisions by litigants. It is because only the final decisions produce legal effects, which implies that the winning trial party can exercise the right only after the decision has become final. Because in the case where the appellant has submitted the appeal against the first instance court within deadlines, then the first instance court judgment shall not be considered final until the second instance court renders its decision on the appeal. The right to use legal remedies against court decisions is aimed to maintain legal security and protection of parties' rights in court proceedings. The purpose of this scientific paper is to handle the right of parties to use legal remedies against court decisions in the civil contested procedure, where shall be presented essential explanations for all types of legal remedies. Hence, in order for the parties to exercise their rights effectively is very important to have full respect of procedure regarding the submission of legal remedy against court decisions. It has also become bright n which cases and against which court decisions the parties may submit legal remedies. Because there is a difference concerning the use of legal remedy against the first instance court decisions and the second instance court decisions.

The right to use legal remedies is recognized as a constitutional category, which implies that the parties have a certain right to submit appealing means against court decisions under the law. Such right is guaranteed to the parties by applicable legislation, whereas whether they shall submit legal remedies within legal deadlines against court decisions, it is up to them. For the parties or their representatives is not an obligation to undertake procedural actions in order to appeal the court decision when it comes to rendering court decisions in the contested procedure. Therefore, in order to conduct a more specific elaboration concerning the importance of legal remedies in the contested procedure, in this scientific paper, we have made handling concerning the right to use legal remedies against court decisions, the types of legal remedies, ordinary legal remedies and extraordinary legal remedies.

Such content is made by bearing in mind that in addition to the right of parties to use legal remedies, there are various distinctions concerning ordinary and extraordinary legal remedies of appealing decisions in the contested procedure. This distinction has to deal with the fact that the parties may appeal the decision rendered by the first instance court within legal deadlines by submitting the appeal. Hence, it is the parties' right that against the first instance court decision to submit ordinary legal remedies. If the legal deadlines for submitting an appeal have passed and the parties did not submit an appeal against the judgment, hence, in these cases, even though we are dealing with the first instance court decision, the decision shall become final. Against this decision, the party cannot submit the appeal as an ordinary legal remedy.

The parties may submit extraordinary legal remedies against the second instance court decision because of against the final decisions; the parties cannot submit ordinary legal remedies. However, they can submit only extraordinary legal remedies of appealing court decisions in the contested procedure. The parties and their representatives may submit legal remedies in the manner stipulated by legal provisions, and in a concrete case based on legal

provisions foreseen by the Law no. 03/L-006 on contested procedure¹ (hereinafter LCP). Whereas, court competences, are foreseen by the Law no. 06/L-054 on Courts² (hereinafter LC). Likewise, in this scientific paper have been made handling by giving legal references about legal remedies based on the Civil Procedure Code of the Republic of Albania³ (hereinafter CPCRA) and the Law on Contested Procedure of North Macedonia⁴ because also by other countries, legislations are paid particular importance to the matter of dealing with legal remedies of appealing court decisions.

Therefore, it may be considered as a problematic fact of not correctly using legal remedies against court decisions, by not identifying how legal remedies are divided to this procedure, and in which cases these legal remedies may be submitted against court decisions. It is because the legal remedies in the civil contested procedure are divided into regular and extraordinary legal remedies. It is crucial to handle legal remedies because these cases are confusing for the litigants. As a result, it may result in the loss of any right. Because in civil litigation, it is required an active role of the litigants before the first instance court and in the procedure according to legal remedies.

RESEARCH METHODS

In this scientific paper I have used normative, deductive, comparative and descriptive methods. Through the normative method, we have presented the legal basis. The deductive method has the effect of presenting handlings from the general point of view up to specific issues. From a comparative point of view, we have addressed in the text of this scientific paper particular issues that are regulated by the Legislation of Kosovo, Albania, and the legislation of Northern Macedonia. Bearing in mind the fact that the right to use legal remedies is a fundamental human right. The descriptive method has been used in order to accurately present any right foreseen by the individual legal acts because allowing or refusing of legal remedy against a particular decision can only be determined by the legislation regulating the actual procedure.

ANALYSIS AND DISCUSSION

The right to use legal remedies against court decisions is a constitutional category because international legal acts and the constitution guarantee this right. In order to be considered as a fair trial, legal remedies have a decisive role in the exercise of the parties of the right to the proceedings and the examination of court decisions by the competent courts. The right of parties to use legal remedies against court decisions is guaranteed by the Universal Declaration

¹ Republic Kosovo/Pristina, "Law No. 03 / L-006 on Contested Procedure, Official Gazette of the Republic of Kosovo / Pristina: Year III / No. 38/20 September" (2008).

² Republic Kosovo/Pristina, "Law No. 06 / L - 054 on Courts, Official Gazette of the Republic of Kosovo / No. 22/18 December 2018, Pristina." (2018).

³ Tirana Publication of the Center for Official Publications, "Law No. 8116, Dated 29.3.1996, the Civil Procedure Code of the Republic of Albania (as Amended by the Laws No. 8431, Dated 14.12.1998; No. 8491, Date 27.5.1999; No. 8535, Dated 18.10.1999; No. 8812, Dated 17.05.2001; No. 9062, Dated 8.5.2003; No. 9953, Da" (2017).

⁴ Official Gazette of the Republic of Macedonia, "Law on Contested Procedure of Macedonia, Official Gazette of the Republic of Macedonia, No. 79/2005" (2005).

of Human Rights⁵ (hereinafter: UDHR) of 1948 (Article 8 of the UDHR) and the European Convention on Human Rights (hereinafter: ECHR)⁶ of 1950 (Article 6, paragraph 1 of the ECHR),⁷ as one of the fundamental human rights. In the Constitution of the Republic of Kosovo of 2008 (hereinafter: CRK), it is foreseen a direct implementation of international agreements and instruments (Article 22 of the CRK).⁸ Also, the right to use legal remedies is foreseen by the Constitution of the Republic of Kosovo (Article 32 of the Constitution of the Republic of Kosovo),⁹ in cases when the party alleges that by the court decision has been violated or infringed its rights. The parties shall be granted the right to use legal remedies against court decisions as one of the fundamental rights. In meanwhile, the procedure for submitting or using legal remedies is determined by law (chapter XIII and XIV of the LCP). By higher legal acts, shall be stipulated in general frameworks the fundamental rights also guaranteed while conducting court proceedings and the right to use legal remedies, but they are defined in detail by special laws, depending on the decision in which procedure is rendered.

Using legal remedies, the parties may appeal court decisions, in cases when they allege that the decision rendered by the court contains violations. Moreover, as a result of violations or omissions made by the court, the party claims that the appealed court decision should be annulled or amended by a higher instance court. Hence, it is understandable that the appellant, through legal remedies, requires a higher instance court to annul or amend the court decision in its favor. However, the fact of submitting a legal remedy against a court decision does not imply that the competent court decision, according to appealing means, shall be more favorable for the appellant. It is because courts act under applicable legislation, which implies if the parties submitted an appeal against the first instance court. Claims of the appellant are not sustainable, the second instance court shall refuse the appeal as ungrounded and shall verify the appealed judgment of the first instance court (Article 195, paragraph 1, point d), of the LCP; Article 200 LCP).¹⁰ It is the right of the appellant to give proposals in legal remedy in terms of how the court should decide concerning the appealing means against the first instance court judgment. However, nevertheless, the court is not bound by the proposal given to appeal from the appellant (Article 195 paragraph 2 of LCP).

By higher legal acts (Article 8 UDHR, Article 6 (1) ECHR and Article 32 of the CRK), it is guaranteed the right to use legal remedies against court decisions. So, it is the fundamental right of the parties to use legal remedies against court decisions. Such right is foreseen by legal acts, in order to protect the rights of parties to procedure. Moreover, it is a principle that against a lower instance court decision, the dissatisfied party by the decision rendered to have the right

⁵ N Nurhidayatuloh et al., "Forsaking Equality: Examine Indonesia's State Responsibility on Polygamy to the Marriage Rights in CEDAW," *Jurnal Dinamika Hukum* 18, no. 2 (2018): 182–93, <https://doi.org/10.20884/1.jdh.2018.18.2.810>.

⁶ Nurhidayatuloh and Febrian, "ASEAN and European Human Rights Mechanisms, What Should Be Improved?," *Padjadjaran Journal of Law* 6, no. 1 (2019): 151–67.

⁷ Qehaja Rrustem, "Procedural Actions on Appealing in Civil Matters under Kosovo Law," *Civil Procedure Review* 8, no. 3 (2017): 79–92.

⁸ Luan Omari, *Constitution of the Republic of Kosovo in a Comparative Overview* (Tirana: Botimet Dudaj, 2009).

⁹ Enver Hasani and Ivan Cukalovic, *Commentary: Constitution of the Republic of Kosovo*, First Edit (Pristina: Deutsche Gesellschaft fur Internationale Zusammenarbeit -GIZ- GmbH, 2013).

¹⁰ Faik Brestovci, *Civil Procedural Law II, Fourth Reprint* (Pristina: University of Prishtina, 2006).

to require the examination of the decision by a higher instance court under applicable legislation. It implies, if the party claims that the first decision rejects any right, then the authority is by the Court of Appeal (Article 21 paragraph 1 of LC). Whereas against the second instance court decisions, the dissatisfied party may submit extraordinary legal remedies for which the Supreme Court decides under the legal provisions (Article 220, Article 235, Article 249 of the LCP and Article 26, paragraph 1, subparagraph 1.1 and subparagraph 1.2. of LC).

Basically, once there is a first instance court decision, the parties may submit an appeal within legal deadlines. In civil procedure, the principle of availability is of a particular importance,¹¹ which implies that it is in the will of the party whether it will take procedural actions. If the party is not satisfied with the first instance court decision, it is entitled to use legal remedies. Basically, the parties always are entitled to use legal remedies against court decisions; however, legal provisions in some cases may be limited the right to use legal remedies. Hence, not always the use of legal remedies against the decision is permissible. It is because there might be limitations (Article 26 par. 3, Article 36, Article 69, Article 70 par. 5, Article 73 par. 4, Article 78 par. 5, Article 92 par. 3, Article 101 par. 4, LCP). These are various rulings against which the party has no right to appeal, which implies that the LCP also provides other decisions against which the appeal is not permissible. The lawmaker in a taxation manner by legal provisions has foreseen cases against which rulings the appeal is not permissible. By law, it may be foreseen in what cases the specific legal remedy is not permissible. As a typical case, it may be taken the ruling through which is decided concerning court's jurisdiction (Article 26, paragraph 3 LCP), but always allowing or not allowing of legal remedy against a particular court decision is stipulated by the law in order to have different actions in practice.

TYPES OF LEGAL REMEDIES

From what was abovementioned, it is implied that the parties are entitled to use legal remedies against court decisions based on applicable legislation. Except for guaranteeing the right to use legal remedies, it is important to emphasize what are the types of legal remedies or how are classified the appealing means against civil contested procedure decisions. Based on determination or division made to these legal remedies, it is easier to understand that against which decisions and in what cases the parties may use these legal remedies.

According to the LCP, the appealing means of decisions in the contested procedure are divided into Ordinary legal remedies and Extraordinary legal remedies (Chapter XIII and Chapter XIV of the LCP). The LCP foresees this classification of appealing means against decisions in the contested procedure, and also such division about appealing means against decisions in the contested procedure is also done in the civil legal doctrine. Classification of appealing means against decisions is made by having in mind the fact that what decisions may be appealed by ordinary legal remedies and what decisions may be appealed by extraordinary legal remedies. Which of these abovementioned legal remedies shall be used against court decisions it depends on whether we are dealing with decisions rendered by the first instance court or decisions rendered by the second instance court. Alternatively, better say concerning

¹¹ Franc Terihati, *Civil Procedure* (Tirana: Pegi, 2015).

cases when dealing with decisions that are not final and binding. Since, even the decision rendered by the first instance court, if it is not appealed from the appellant within legal deadlines, shall become a final decision, even though we are dealing with the first instance court decision. In what cases are we dealing with the final decision shall be determined by law (Article 166, paragraph 1 of the LCP).

Legal remedies differ depending on whether they are regular or extraordinary legal remedies. However, the purpose of the litigants is the same, to have an examined court decision of a lower court by a higher instance court. By appeal, the party claims that the decision of the second instance court to be more favorable for the appellant rather than the first instance court decision which opposes by legal remedy within legal deadlines. By guaranteeing this right with legal acts as the main goal is to render lawful and fair decisions in order not to deny the rights of litigants in civil litigation. As a problematic matter, it may be considered non-adjudication according to legal remedies by the competent court within a reasonable time. Bearing in mind that the parties are guaranteed the right to an effective remedy (Article 13 of the ECHR).

When a decision shall be considered final is also foreseen by legislations of other countries in a taxation manner. Thus, according to the CPCRA: "A court decision becomes final in the following cases: a) when it cannot be appealed; b) when no appeal has been submitted against that decision within legal deadlines or when the appeal has been withdrawn; c) when the submitted appeal has not been admissible; d) the decision of court is left in force, amended or the trial has been terminated in the second instance court" (Article 451 of the CPCRA). Hence, even by article 451 of the CPCRA, it is decisively foreseen when a decision becomes final. Moreover, a final decision cannot be appealed through appeal as an ordinary legal remedy in the contested procedure. Also, the Republic of North Macedonia, through the Law on Contested Procedure (See the twenty-four and the twenty-fifth chapters of Macedonia's Law on Contested Procedure), foresees the appealing means against decisions in this procedure. Also, in Article 442 of the CPCRA, concerning usage of legal remedies is stated: "Legal remedies against court decisions are the following: submitting an appeal to the Court of Appeals, recourse to the High Court, and the request for revision." In cases where the party submits ordinary or extraordinary legal remedies against court decisions, in both cases, we are dealing with a form of dissatisfaction expressed by the party regarding the court decision against which submits the legal remedy. Under the law, the party submitting the appeal against judgment is required to have legal interest (Article 2 paragraph 4 of the LCP).¹²

Through submitting ordinary legal remedies, the parties do not agree with the decision rendered by the first instance court, by claiming that the first instance court has rendered an unlawful judgment. Whereas in cases when the parties submit extraordinary legal remedies, they also disagree with the decision rendered by the second instance court if they have submitted an appeal beforehand. A typical case, when the parties submit extraordinary legal remedies against the decision rendered by the second instance court, can be considered the case when the second instance court rejects the appeal of the appellant as ungrounded and verifies the first instance court judgment. Since the party, through submitted appeal against the first instance court, claims that the decision rendered by the second instance court shall be more

¹² Alban Abaz Brati, *Civil Procedure*, First Edit (Tirana: Botimet Dudaj, 2008).

favorable to him/her as the appellant. It is worth emphasizing the fact that legal remedies are also foreseen in other civil proceedings such is the case in execution procedure where according to the Law on Execution Procedure (hereinafter: LEP),¹³ are foreseen ordinary legal remedies (Article 67 par. 1 of the LEP) and extraordinary legal remedies (Article 68 par. 1 of the LEP). However, each procedure has its specifications, where the differences between them can be observed. It is also crucial that disputes between the litigants be resolved without any delay because delays in resolving disputes between the litigants undermine the exercise of their rights within a reasonable time.¹⁴

ORDINARY LEGAL REMEDIES

By ordinary legal remedies is implied procedural actions undertaken by the parties in order to appeal the first instance court decision, in cases when the appeal is permissible. Against first instance court decisions, which the right to appeal is permissible, the appeal may be submitted within legal deadlines. Until the deadline for submitting an appeal is over, the first instance court decision cannot be considered final. Whereas, if the party submitted an appeal within legal deadlines, also the first instance court decision cannot be considered final in part appealed by appeal (Article 176, paragraph 2 of the LCP).

Due to the importance of having legal remedies against court decisions in the contested procedure, they are foreseen in a taxation manner by law, by stipulating the procedure according to ordinary legal remedies and the deadlines for their submission. The thirteenth chapter of the LCP foresees these legal remedies in the contested procedure. Among other things, it is foreseen that the parties may submit an appeal against the judgment within legal deadlines for appeal (Article 176, paragraph 1 of the LCP and Article 206, paragraph 1 of the LCP). As a competent court to review and decide concerning submitted appeals by the parties against the first instance court decisions or primary court, is the Court of Appeals (Article 22, paragraph 1, sub-paragraph 1.1 of LC; Article 176 paragraph 3 of LCP).

Ordinary legal remedies against court decisions in the contested procedure are the following:

- a) The appeal against judgment and
- b) The appeal against the ruling (Chapter XIII of the LCP).

Even though ordinary legal remedies may appeal the first instance court decisions, if the party did not comply with the legal deadline for submitting an appeal, the decision rendered by the first instance court shall become final. In this case, we are dealing with the passive attitude of the party because it silently agrees with the decision rendered by the first instance court. Moreover, although the right to appeal has been permissible against the first instance court decision, the party did not submit an appeal within legal deadlines, the decision shall become final. In this regard, the party lost the right to submit an appeal against the first instance court decision whether the court decision rendered in the form of a judgment or a ruling. The parties may declare before the first instance court that they waive from the right to appeal.

¹³ Republic Kosovo/Pristina, "Law No. 04 / L-139 on Execution Procedure, Official Gazette of the Republic of Kosovo/No.3/31 January" (2013).

¹⁴ Rustem Qehaja and Elza Bajrami, "Judicial Civil Procedure Dragging out in Kosovo," *Academic Journal of Business, Administration, Law and Social Sciences* 2, no. 1 (2016): 62–65.

Nevertheless, if the parties claim that by a rendered decision of the first instance court has come to denial or violation of their rights may submit an appeal as an ordinary legal remedy against the first instance court decision. The first instance court may render decisions in the form of judgment or a ruling. We say this concerning contested procedure decisions because, in other procedures, it may be foreseen that court decision to be rendered in the form of rulings.¹⁵

a) Appeal against judgment

The appeal against judgment is an ordinary legal remedy utilizing which the dissatisfied party with the first instance court judgment may submit an appeal within legal deadlines for appeal. By legal provisions of the LCP is foreseen: the right to appeal, content of appeal, grounds for which the judgment may be appealed, procedure according to appeal, limits of examination of the first instance court judgment and the decisions of the second instance court on the appeal (Articles 176 to 205 of the LCP).¹⁶ Hence, legal provisions have been foreseen all matters related to the right of the party to use this legal remedy up to the second instance court decisions on the appeal submitted by the appellant. This situation implies that by rendering a decision of the second instance court on the appeal submitted by appellant (Article 195, paragraph 1 of the LCP), then the decision rendered by the second instance court shall be considered a final decision. Furthermore, against final decisions, the parties cannot submit the appeal as an ordinary legal remedy in the contested procedure, but only extraordinary legal remedies stipulated by applicable legislation.

The right to appeal is also guaranteed by the Constitution of the Republic of Albania.¹⁷ Whereas Article 442/a of the CPCRA provides in more detail the right of appeal. An appeal against the judgment may be submitted by both parties, whether it is the plaintiff or the respondent in cases where they claim that they have been denied any rights. The submitting appeal does not automatically imply that the second instance court shall be more favorable rather than the first. It is because such a thing depends on the findings of the second instance court after it has examined the first instance court decision according to appeal. However, if only one party has submitted an appeal, it comes to expression *reformation in previous prohibition*, which implies that the second instance court decision cannot be more unfavorable to the appellant rather than the first instance court decision in cases where only one party has submitted the appeal (Article 203 of the LCP). The Law also guarantees the right to appeal to the Contested Procedure of North Macedonia.¹⁸

b) The appeal against the ruling

Also, the appeal against the first instance court ruling is an ordinary legal remedy in the contested procedure. This situation implies the fact that according to what is foreseen by legal provisions, the party may submit an appeal, under the conditions set by law. Hence, basically,

¹⁵ Republic of Kosovo / Pristina, "Law No. 03 / L-007 on Non-Contested Procedure, Official Gazette of the Republic of Kosovo / Pristina: Year IV / No. 45/12 January" (2009), Article 17, par. 1.

¹⁶ Rrustem Qehaja, "Appeal against Judgment in Civil-Contested Procedure," *Law Life* 1, no. 1 (2013): 5–20.

¹⁷ Donika Plakolli and Lirime Cukaj, "The Right to Appeal under the Constitution of Albania and Court Jurisdiction," *Academic Journal of Business, Administration, Law and Social Sciences* 3, no. 1 (2017): 90.

¹⁸ Tatjana Zoroska Kamilovska Arsen Janevski, *Civil Procedural Law-Contested Law* (Skopje: South East European University, 2009).

the parties may appeal through submitting an appeal the ruling rendered by the first instance court unless otherwise provided by law (Article 206, paragraph 1 of the LCP). Through the LCP legal provisions, it has been regulated that the appeal is a contrast to the rule (Articles 206 to 210 of the LCP).¹⁹ If analyzed the legal provisions of the LCP dealing with ordinary legal remedies, then it can be noticed that most of the legal provisions are dedicated to the appeal against the judgment in the contested procedure. However, the lawmaker has determined by legal provisions that in the procedure according to unique appeal submitted against the first instance court ruling adequately shall be applicable legal provisions dealing with the appeal against judgment (Article 208 of the LCP). Therefore, the appeal may be submitted by the parties also against the first instance court ruling. However, unlike the appeal, the lawmaker has foreseen accurately that against specific rulings, the parties have no right to appeal. Disallowing legal remedies against the ruling may be stipulated by law.

EXTRAORDINARY LEGAL REMEDIES

When we handled regular legal remedies, among other things, we have emphasized these legal remedies may be submitted against the first instance court. In contrast, in the case of extraordinary legal remedies, it implies that these legal remedies may be used only against final decisions under legal provisions. Therefore, there is a substantial difference, because regular legal remedies may be submitted against decisions which are not final, whereas extraordinary legal remedies may be submitted against final decisions. The organizational structure and competences of the courts are determined by law (Chapter III of the LC). Through extraordinary legal remedies, the party may submit an appeal against final court decisions. Because against final court decisions, the party cannot submit ordinary legal remedies. Extraordinary legal remedies are foreseen by the fourteenth chapter of the LCP by specifying the cases against which court decisions may be submitted to these legal remedies. These legal remedies are implied procedural actions undertaken by the party in order to appeal the final decision. Final decisions are decisions rendered by the Court of Appeals as the second instance court. The LCP foresees extraordinary legal remedies and their classification. When it comes to extraordinary legal remedies usually decides the highest instance court of the country, which in Kosovo case is the Supreme Court. In legal theory, there are firm attitudes about the importance of extraordinary legal remedies. "The legal system, though, would be imperfect if it did not contain procedural means by which, under foreseen conditions, it is possible to examine the final decision."²⁰ Hence, through extraordinary legal remedies, there is a possibility to appeal final decisions. Where after submitting the respective extraordinary legal remedy against a final decision to be activated, a higher instance court is the Supreme Court. It is considered to have a direct impact on legal certainty and in elimination or correction of eventual omissions, which could have been done by the lower instance court. Hence, the Supreme Court, as the highest judicial authority, may examine the final decision, after the party submits the extraordinary legal remedy against final decisions under LCP legal provisions.

¹⁹ Iset Morina and Selim Nikci, *Commentary: Law on Contested Procedure - LCP*, First Edit (Pristina: Deutsche Gesellschaft für Internationale Zusammenarbeit-GIZ-GmbH, 2012).

²⁰ Borivoje Pozniq, *Civil Procedure Law*, Second Edi (Pristina: University of Prishtina, 1981).

By the LCP are foreseen the following extraordinary legal remedies against court decisions in the contested procedure:

- a) Revision;
- b) Repetition of procedure and
- c) Request for protection of legality (Chapter XIV of the LCP).

In order to submit these extraordinary legal remedies, the parties must comply with the legal deadlines, grounds, and provided legal proceedings for their submission against final court decisions. Hence, the competent court shall decide according to submitted extraordinary legal remedies against court decisions (Articles from 211 to 251 of the LCP). Even in cases when the party did not submit an appeal against the first instance court decisions within legal deadlines, we are dealing with the final decision. In which cases may be submitted extraordinary legal remedies, from whom they may be submitted and under what the LCP foresees legal deadlines these matters. Each of the extraordinary legal remedies against court decisions has its specifications, because litigants may submit not all these legal remedies. As a typical case, it is the submission of a request for protection of legality that is competent to be submitted by the state prosecutor (Article 245 paragraph 1 of the LCP). Depending on issues that are controversial by the parties regarding the final decision, shall be used these legal remedies. Nevertheless, the lawmaker decides decisively on what grounds and against which court decisions may be submitted extraordinary legal remedies in the contested procedure. Complying with legal deadlines and legal proceedings for these extraordinary legal remedies is indispensable.

If the parties in contested procedure claim that even after reviewing the appeal by the second instance court, the decision rendered contains violations, then against the second instance, court decisions may submit extraordinary legal remedies. Concerning extraordinary legal remedies, decides the Supreme Court of Kosovo (Article 26, paragraph 1, sub-paragraph. 1.1. of the LC). The submission of extraordinary legal remedies in the contested procedure has its specifications. It is because it is essential to know which legal remedy may be submitted against a final decision, within which legal deadlines, who can submit it, and in which cases is allowed the submission of extraordinary legal remedies.

a) Revision

Revision is an extraordinary legal remedy in the contested procedure that may be submitted by the parties against a final decision by respecting the legal provisions of the LCP. Through the LCP, it is foreseen revision as an extraordinary legal remedy. It includes submitting revision against the second instance court judgment, legal deadlines for submitting revision, cases when revision is permissible, in which cases revision is not permissible, in what cases regardless of value of dispute object revision is always permissible, the competent court to decide on revision, grounds for which revision may be submitted, revision against the ruling etc (Articles 211 to 231 of the LCP, Article 9 of the Law no.04/L-118).²¹ Hence, this extraordinary legal remedy in the contested procedure is stipulated by law, by clearly specifying for what grounds

²¹ Faik Brestovci, Iset Morina, and Rrustem Qehaj, *Civil Procedure Law Contested Procedure*, Fifth Edit (Pristina: University of Prishtina, 2017).

may be submitted this legal remedy against the second instance court decisions. Submission of revision is not an obstacle for the final judgment to be executed (Article 213 of the LCP), whereas concerning this legal remedy decides the Supreme Court of Kosovo (Article 212 of the LCP). If the party has submitted revision as an extraordinary legal remedy against a final decision, but the Supreme Court finds that the claims of the party who submitted the revision are not sustainable, then it shall reject the revision submitted by the party as ungrounded.²² Revision can be presented: a) for violation of provisions of contested procedures from the Article 188 of this law done by the procedure of the court of second instance; b) due to wrongful application of material right; c) due to over passing claim charge, if the irregularities were done in the procedure developed in the court of second instance (Article 214, paragraph 1 of the LCP).

b) Repetition of procedure

Repetition of the procedure as an extraordinary legal remedy in the contested procedure is foreseen in a taxation manner by LCP (Articles 232 to 241 of the LCP),²³ where it is stated that the completed procedure by final judgment or ruling can be repeated according to party's proposal by setting the deadline for its submission, the competent court which decides concerning this legal remedy, in which court should be submitted the proposal for repetition of procedure, etc. Also, it is worth emphasizing the fact that repetition of the procedure as an extraordinary legal remedy is of particular importance, by having in mind legal situations in practice for which the parties may submit this extraordinary legal remedy (Article 232 of the LCP). In cases when the parties claim the rendered decision containing violations, the lawmaker leaves the possibility for the party to take the initiative through this legal remedy in order to make a request or propose to the court to allow the repetition of the procedure. Concerning the proposal for repetition of procedure decides the second instance court based on legal provisions of the LCP (Article 235 LCP).

Finalized procedure with an absolute decree can be repeated based on the proposal party: a) if the party with an illegal act, especially in the case of not being invited to the session, the party is not given the opportunity to part take in the examination of the main issue; b) if in the final procedure, as a charging party or unknowingly participated the individual that can't act as an intermediate party; the legal entity wasn't represented by an authorized person, when the party without legal background wasn't represented by its legal representative, when the legal representative or by proxy of the side had no required authorization for pursuing the issue at the court or for conducting concrete procedural actions respectively when pursuing the case at the court or conducting concrete procedural actions was not approved by the side later on; c) if the final decision of the court was based on untrue statements of witnesses, experts, or based on falsified documents or in which untrue content was certified; d) if the final decision of the absolute decree is a result of penal act of the judge, legal representative or by proxy of the side, opposing side of the third party; e) if the party gains the possibility to use the courts verdict of the absolute decree, which was earlier issued in the procedure developed among the same

²² Kosovo Law Center, "Judicial Practice Bulletin of the Supreme Court of Kosovo" (2011).

²³ Pozniq, *Civil Procedure Law*.

parties for the same charge claim; f) if the final decision of the absolute decree is based on another court verdict, or on the verdict of another body while this verdict was changed, revoked or annulled by an absolute decree; g) if the party is aware of other facts or finds new proofs, or gains the opportunity to get a more favorable verdict if these facts and proofs were used in the earlier procedure (Article 232, paragraph 1 of the LCP).

c) Request for protection of legality

Likewise, the request for protection of legality is foreseen by the LCP (Article 245 to Article 251 of the LCP) as an extraordinary legal remedy, by emphasizing matters in terms of who may submit this legal remedy against a final decision, legal deadlines for submission of this legal remedy, grounds for submitting the request for protection of legality, how shall the competent court decide if against the same decision is submitted the revision and the request for protection of legality, etc. Specifying all these critical matters by law regarding this extraordinary legal remedy has as the primary purpose coming to a resolution of a legal case fairly, in cases when there are allegations that the final decision contains violations. By law it is foreseen who may submit the request for protection of legality (Article 245 of the LCP; Article 1 of the Law no.04/L-118)²⁴ against a final decision, within legal deadlines stipulated by legal provisions, whereas the merit-based decision concerning this extraordinary legal remedy is in the exclusive competence of the Supreme Court of Kosovo (Article 26, paragraph 1, subparagraph. 1.1. of the LC). Against verdict of the absolute decree, the public prosecutor might raise the request for legal protection within three months. The term for raising the request for legal protection from paragraph 1 of this article is considered: a) against the decision taken in the first instance, against which there was made no complaint from the day this decision could be opposed by claim; b) against the decision taken in the second instance, against which is declared the revision from the day this decision was taken to the party delivered at the latest (Article 245, paragraph 1 of the LCP).

CONCLUSION

The right to use legal remedies against court decisions is a fundamental right of the parties. In this paper, we have emphasized that the right to legal remedies is guaranteed by the Universal Declaration of Human Rights of 1948, the European Convention on Human Rights of 1950, and the Constitution of the Republic of Kosovo of 2008. Whereas according to special law regulating procedures concerning legal remedies against court decisions in the contested procedure is the Law on Contested Procedure of Kosovo of 2008.

Legal remedies against court decisions in the contested procedure are divided into ordinary and extraordinary legal remedies. Through ordinary legal remedies, the parties may appeal the decision rendered by the first instance court within legal deadlines for appeal, so decisions which did not become final. Whereas through extraordinary legal remedies, the parties may appeal final decisions or the second instance court decisions under the law.

²⁴ “Law No. 04 / L-118 on Amending and Supplementing the Law No. 03 / L-006 on Contested Procedure States: “Throughout the Entire Law Text the Phrase ‘Public Prosecutor’ Is Replaced by the Phrase ‘State Prosecutor’” (n.d.).

Concerning ordinary legal remedies, decide the Court of Appeals as the second instance court which operates throughout the territory of the Republic of Kosovo. Regarding revision and the request for protection of legality as extraordinary legal remedies decide the Supreme Court of Kosovo, as the highest judicial authority, whereas concerning the proposal for repetition of the procedure according to law decides the Court of Appeals as the second instance court. An active role of the parties is required to undertake procedural actions with appealing the court decision rendered by the competent court in the contested procedure. Basically, against the first instance decisions, the parties may submit ordinary legal remedies. In contrast, against the second instance, court decisions or final decisions, the parties may submit extraordinary legal remedies.

The litigants need to be informed concerning their right to appeal against court decisions in a civil contested procedure under the law. Also, in order for the litigation between the litigants to be resolved within a reasonable time, it is necessary that in all court instances to be conducted court proceedings without delays but within a reasonable time. The right to use legal remedies provides a more significant legal certainty because they inevitably affect the protection of litigants' rights and the correction of the respective court work. It is also essential for the courts to decide on legal remedies without delays in order for the parties to be informed about the decision of the higher instance court concerning the court whose decision appealed. We have emphasized that the appeal against the judgment has a suspensive and devolution effect. Failure to submit legal remedies from the parties against the first instance decisions opens the possibility of a final decision being rendered, despite the decision rendered that may contain violations.

The parties have the undeniable right to submit legal remedies against court decisions rendered by the competent courts in contested procedure under the law. Through legal remedies, the parties request from the competent court to annul or amend the court decision which is appealed by legal remedies either by ordinary or extraordinary legal remedies when we are dealing with the final decision. Also, we have emphasized that the right of parties to use legal remedies against court decisions is a fundamental right guaranteed by international legal acts and constitution as the highest legal act.

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