Civil Procedure Review
AB OMNIBUS PRO OMNIBUS

3

Procedural actions concerning appeal in civil dispute under Kosovo legislation

Rrustem Qehaja

Professor of Civil Procedural Law at the University of Prishtina "Hasan Prishtina" PhD

Prof. Dr. Rrustem QEHAJA, has completed basic and postgraduate studies at the Faculty of Law, University of Pristina, in the Republic of Kosovo. Whereas, he is doctorated in civil legal sciences at the University of Tirana in Albania. At the beginning he used to work as an assistant, later as a lecturer, and now is in Advanced Prof. Asoc. at the Faculty of Law at the University of Prishtina "Hasan Prishtina" in Prishtina, Republic of Kosova. He lectures contested civil procedure, noncontested civil procedure and insurance law. He has published several scientific articles in several national and international journals, and has also been part and he is acting as an expert in several vital projects in Kosovo legal system.

rrqehaja@yahoo.com
rrustem.qehaja@uni-pr.edu

Abstract

In this scientific paper shall be handled the description of undertaking procedural actions on the purpose of conducting procedure according to appeal against civil judgment.

Appeal represents a regular legal remedy with suspensive effect in comparison to extraordinary legal remedies of attacking civil decisions which do not have suspensive effect.

Therefore, a special attention shall be paid to the handling of appeal in procedural terms as well actions concerning the appeal, but not to causes from which the appeal may be submitted as a regular legal remedy, deadlines and decisions rendered by a higher degree court, and not only regarding local level how this issue is regulated by our legislation respectively by the Law on Contested Procedure (LCP) provisions, but also broader.

Keywords: Appeal**,** Court, Civil procedure, Contest, Law on Contested Procedure

1. INTRODUCTION

Based on the fact that one of the fundamental rights of every citizen is his right to attack a decision of any state body in cases when he does not agree with that decision and claims that by that decision it has been made any injustice to him, hence due to this intention the legislator has foreseen legal remedies with special importance within this group takes the appeal.

Conducting procedure according to appeal in legal-civil context is preceded by the submission of appeal from the dissatisfied party with the court decision which may act within legal deadlines and only if it comes to the fulfillment of at least one of determined causes by provisions of the Law on Contested Procedure (hereinafter LCP).

2. LEGAL REMEDIES AND THEIR MEANING

Legal remedy is one of the most important legal instruments in contemporary countries through which to every individual is guaranteed the protection of rights and freedoms known by national and international legal acts.

A court decision, like any human act, may be flawed and with errors.[1] Therefore, legal remedies represent instruments through which a party who is not satisfied by a rendered court decision in a particular procedure in which it was subject to it, to attack that decision and by that to request that decision to be reviewed or to be annulled in order to recognize its right. For correction of decisions' errors, it is accepted by different procedural systems the reviewing of case by another court through attacking these decisions with special legal remedies called means of attacking decisions.[2]

By this is created the possibility through submitting legal remedies, to be rendered a fairer court decision, where a new decision shall be rendered as a consequence of control and critical review of a decision rendered in the previous trial and that a new trial shall be conducted by a higher court, whose judicial panel consists of judges supposed to be more qualified than judges of the first instance.[3]

By means of attack is implied the procedural remedy through which a party or any other authorized person from a competent court requires to annul or change the decision he claims to prove that is unfavorable, unfair and unlawful to him.[4] Thus, by this procedural remedy this party expresses its dissatisfaction to the rendered decision in a particular procedure. Appeal is a legal remedy which the law makes available to

1. Brati, Alban A.; *Civil Procedure*, Tirana, 2008, pg. 435.
2. Brestovci, Faik; *Civil Procedural Law II,* (Fourth reprint) Prishtina, (2006), pg. 62.
3. Brati, Alban A.; *Op.cit.,* pg. 435.
4. Brestovci, Faik; *Op.cit.,* pg. 62.

Civil Procedure Review, v.8, n.3: 79-92, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

the parties in order to provoke a new trial, through which is hoped to regulate flaws and errors of a previous rendered court decision.[5]

Due to this reason, from the subjective point of view, the means of attack represent the power and right known by the law to a subject, in order to request for a new reviewing of case and rendering a new court decision by a higher court. Whereas from the objective point of view, it represents the act by means of which is exercised this power and this right, by including also the internal procedure initiated by this act. [6]

Appeal is an act through which parties or other participants to the process submit before of the Court of Appeals their objections against a final decision of the district court.[7]

2.1. Use of legal remedies, as a basic right

The right to appeal by using legal remedies of attacking decisions is a basic human right guaranteed by Declarations and International Conventions, as well as by Constitution and national laws. This right is protected by the Universal Declaration of Human Rights under articles 8[8] and 10.[9] Likewise, the European Convention for the Protection of Human Rights and Fundamental Freedoms foresees and guarantees this right under Articles 6[10] and 13.[11] This right is also a constitutional category, where the Constitution of the Republic of Kosovo as a contemporary document that meets the parameters of a democratic state, based on the principles of liberty, peace, democracy, equality, respect for human rights and freedoms , the rule of law, non-discrimination, property rights, environmental

5. Brati, Alban A.; *Op.cit.,*, pg. 435.
6. Ibid., pg. 436.
7. Terihati, Franc: *Civil Procedure,* Tirana, 2015, pg. 237.
8. Article 8: "Everyone has the right to an effective recourse before competent national jurisdictions for acts that violate the fundamental rights recognized to him by the constitution or law."
   The Universal Declaration of Human Rights adopted and proclaimed by the United Nations General Assembly by its 217A (III) resolution of 10 December, 1948.
9. Article 10: Everyone has the right, in full equality, to have his case handled fairly and publicly by an independent and impartial tribunal, which has to decide in terms of his rights and obligations, as well as concerning any accusations in the criminal court directed against him. "
   The Universal Declaration of Human Rights adopted and proclaimed by the United Nations General Assembly by its 217A (III) resolution of 10 December 1948.
10. Article 6: "Everyone has the right to be heard fairly, publicly and within a reasonable time by a legally established independent and impartial tribunal that decides either on claims that may arise against his rights and obligations of a civil character, whether to determine if any charges of a criminal nature directed against him are grounded" (Parts from Paragraph 1 of this Article).
    European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.
11. Article 13: "Any person to whom the rights and freedoms recognized in this Convention have been violated shall be entitled to submit an effective remedy before a national instance, even where such offense may be committed by persons acting while exercising their official functions ".
    European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950.

protection, social justice, pluralism, state power sharing and market economy,[12] foresees this right under Article 32,[13] Article 54[14] and Article 102, paragraph 5[15].[16]

Such decision is also accepted and proclaimed by the European Court of Human Rights: "Anyone in criminal process, whether in civil process, should have the possibility to present to the court rightfully, his case, under conditions that do not set him in a significantly disadvantaged situation in relation to the opposing party." [17]

2.2. Legal remedies in contested procedure

Legal remedies bearing in mind the fact that are procedural actions by means of which parties and other authorized persons in procedure attack the decision which they consider to be unlawful and unfair and request to the court of legal remedy after verifying merits of their claims to change or annul it by its own decision, these attacking legal remedies have been foreseen in all procedural law areas: In civil proceedings (contested, non-contentious and execution proceedings) in criminal proceedings and in administrative proceedings.[18]

Based on this, is implied that also in contested procedure as one of the main civil procedures are allowed legal remedies in terms of attacking rendered decisions in this procedure, by providing in this manner the maximum protection of human rights. When it comes to procedure it is necessary to make a distinction between legal remedy in broad aspect and legal remedy in narrow aspect.

Legal remedies in broad aspect include in addition to legal remedies in narrow aspect also several other legal remedies allowed by law, but in systematic terms the legislator does not regulate them as in sections where are regulated regular legal remedies of attacking decisions. As such is rejection according to payment order (according to the provision of Article 497 of LCP), and the request for returning to

12. Omari, Luan; The *Constitution of the Republic of Kosovo in a comparative observation*, Tirana, 2009, pg. 7.
13. Article 32 (Right to Legal Remedies): "Everyone has the right to use legal remedies against judicial and administrative decisions that violate his / her rights and interests in the manner determined by law."
    The Constitution of the Republic of Kosovo, adopted on 09 April 2008, entered into force on 15 June 2008.
14. Article 54 [Judicial Protection of Rights]: "Everyone has the right to judicial protection in the case of violation or denial of any rights guaranteed by this Constitution or by law, as well as the right to effective legal remedies if it is found that such a right has been violated."
    The Constitution of the Republic of Kosovo, adopted on 09 April 2008, entered into force on 15 June 2008.
15. Article 102, paragraph 2 (General Principles of the Judicial System): "The judicial power is unique, independent, fair, apolitical and impartial and provides equal access to the courts."
    The Constitution of the Republic of Kosovo, adopted on 09 April 2008, entered into force on 15 June 2008.
16. Morina, Iset - Nikçi, Selim; Commentary, The Law on Contested Procedure, (LCP - Edition I), Pristina, 2012, pg. 346.
17. Cited by: Civil Procedure Code of the Republic of Albania (Enriched with Judicial Practice), 1996, pg. 267.
18. Brestovci, Faik; *Op.cit*, pg. 62.

Civil Procedure Review, v.8, n.3: 79-92, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

previous situation (Article 129 of the LCP). As such legal remedy could be considered also the request to change a court decision under Article 141 of LCP. Hence, these legal remedies are legal remedies in a broad aspect by means of which the appellant aims to change or even abrogate a court decision.[19]

Legal remedies in narrow aspect are considered to be all legal remedies by means of which is attacked a court decision. Legal remedies in narrow aspect may be listed according to different criteria. They are divided into legal remedies (ordinary) and irregular legal remedies (extraordinary). [20]

In the Law on Kosovo Contested Procedure, [21] in Chapters XIII and XIV, are foreseen rules concerning means of attacking decisions. The Law itself legally foresees the distinction between legal remedies (ordinary) and irregular legal remedies (extraordinary) of attacking decisions.

In Chapter XIII, articles 176 up to 210 of the LCP are foreseen rules concerning regular legal remedies of attacking decisions. Whereas in Chapter XIV, articles 211 up to 251 of the LCP, are regulated in detail the so-called extraordinary legal remedies.[22]

By ordinary legal remedy of attacking decision is implied that legal remedy which is allowed up to the moment when a decision becomes final in formal terms. Which means such legal remedy is filed against a decision which did not yet become final and as such obstructs the finalization of the decision, while the second instance court (and in some cases the third instance court) render a decision about it. As a legal remedy (ordinary) under this law is the appeal against judgment and appeal against a ruling.[23]

Whereas as extraordinary legal remedies of attacking decisions are those legal remedies which can be submitted after the decision has become final in formal terms. Consequently against the same decision at the same time cannot be submitted the regular legal remedy and extraordinary legal remedy. As extraordinary legal remedies of attacking decisions are: Revision, request for Protection of Legality and proposal for Repetition of Procedure.[24]

Legal remedies are divided also into evolutive and devolutive remedies. By devolutive character of a legal remedy is implied the fact that in relation to a submitted legal remedy shall be decided by court of a higher instance from the one who has rendered the attacked decision.[25]

19. Morina, Iset - Nikçi, Selim; Commentary, Law on Contested Procedure, (LCP - Edition I), Pristina, 2012, pg. 346.
20. Brestovci, Faik; *Op.cit*, pg. 63.
21. Law no. 03 / L-006 on Contested Procedure of the Assembly of the Republic of Kosovo adopted on 30 June, 2008.
22. Morina, Iset – Nikçi, Selim; *Op.cit.,* pg. 345.
23. Morina, Iset – Nikçi, Selim; *Op.cit.,* pg. 345. See: Brestovci, Faik; *Op.cit*, pg. 63.
24. Morina, Iset – Nikçi, Selim; *Op.cit.,* pg. 345-346. See: Brestovci, Faik; *Op.cit*, pg. 63.
25. See: Brestovci, Faik; *Op.cit*, pg. 64.

There is also a division into suspensive and non-suspensive legal remedies. Legal remedies have a suspensive character when they suspend the execution of a court decision, whereas lack this feature when they do not stop the execution of a court decision. Appeal against judgment is always of a suspensive character, whereas appeal against a ruling in principle has this characteristic, but to several rulings the appeal does not have a suspensive character. Extraordinary legal remedies do not have a suspensive character, although, according to circumstances of a concrete case, court may decide to suspend the execution of a decision until proceedings related to that legal remedy comes to an end.[26]

There is also a division into unilateral and bilateral legal remedies. A legal remedy is unilateral if a court decides upon it without having the need to give the possibility to the opposing party to declare concerning its content. On the contrary a legal remedy is bilateral if to the opposing party should be given the possibility to declare concerning claims that the complainer filed. Unilateral means of attack is solely appeal against ruling. All other legal remedies of attacking decisions are bilateral.[27]

There is also a division into independent and dependent legal remedies. Means of attacking decisions are usually independent, and by using them independently may be attacked all court decisions. There are few exceptions to this rule, and they have to do with appeal against several rulings of the first instance court.[28]

3. PROCEDURE ACCORDING TO APPEAL AGAINST JUDGMENT

In the procedure initiated according to appeal acting the court of the first instance which rendered the attacked decision, *(judex a quo),* as well as the court of the second instance, which is competent to decide on merits concerning appeal *(judex ad quem).29* Procedure according to appeal against judgment is conducted into two sections: In the first one acts the court of the first instance whereas in the second one acts the court of the second instance.

3.1. Procedure at the first instance court

The appeal shall be submitted in sufficient copies to the first degree court which rendered the attacked decision (Article 185 of LCP). All this procedure is conducted by the presiding judge who also finds that appeal is filed on time under the law and whether it is complete or permissible. If the appeal is flawed, then the appeal is

26. Ibid., pg. 63-64.
27. Ibid., pg. 64.
28. Ibid., pg. 64-65.
29. Brestovci. Faik, Morina, Iset & Qehaja, Rrustem, Civil Procedure Law, Contested procedure, Prishtina, 2017, pg. 420.

Civil Procedure Review, v.8, n.3: 79-92, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

returned to the appellant to complete it. The appeal presented after the deadline foreseeable by the court, the incomplete one, or the illegal one the court can reject with a decision of the first degree without setting a court session.

A sample of the appeal presented timely, legally and complete, is sent within seven days to the opposing party by the court of the first degree complain, that can be replied with presentation of an appeal within seven days (Article 187).

After this, the first instance court within seven days, prepares the complete file of case concerning appeal and reply to appeal and sends it to the second instance court. If the appellant claims that in first instance court procedure have been violated provisions of contested procedure, then court should give explanations concerning appellant's claims (Article 188 of the LCP).[30]

3.2. Procedure at the second instance court

In the second instance court, is assigned a relevant judge by the president of the judicial panel based on the internal regulation on courts. The rapporteur judge plays a decisive role in a concrete process and is obliged to actively deal with the submitted appeal. In Albania, the rapporteur is appointed by lot.[31] He is entitled to request for additional explanations from the court first instance, which was competent regarding the concrete case. The law does not set a deadline within which the court of first instance should give explanations. Whereas by bearing in mind the principle of efficiency in the procedure as a fundamental principle in the judicial civil proceedings, then the first instance court must give clarifications within a reasonable period of time (Article 189 of LCP).[32]

Concerning the appeal, the second instance court decides either at the main trial hearing or at the judicial panel hearing. In principle, it reviews the case only at the judicial panel hearing. Exceptionally, the appeal is reviewed at the main trial hearing.

New facts cannot be presented through the appeal, or new proof, except when the appellant presents new proofs which couldn't be presented by no fault of the appellant, specifically they should be presented until the main hearing of the first instance court. For discussion, the court of second instance shall determine a direct examination for the case even if the verdict of the first instance court was twice annulled, and in the case when court evaluates that the verdict against which an appeal is filed was based on essential violation of provisions of contestation procedure, or when the factual state was evaluated wrongly or incompletely. The court of second instance can determine evaluation of the case when it estimates that for a rightful

30. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 366-372. See: Brestovci, Faik; *Op.cit.*, pg. 83-85.
31. Tafaj, Kola, Flutura & Vokshi, Asim: Civil Procedure, Part II, Tirana, 2014, pg. 295.
32. See: Morina, Iset – Nikçi, Selim; *Op.cit.,* pg. 372-373. See: Brestovci, Faik; *Op.cit*, pg. 85.

factual state is to be determined and all or partial proofs administered in the court of first instance should be considered (Article 190 of LCP).[33]

In cases when the court determines a hearing for the main trial, then general rules are applicable, which are also applicable concerning procedure before the first instance court. However, certain rules are applicable only to the court of second instance.

The court will summon parties and their representatives for the main trial hearing. All rules are applicable as in the court of first instance. The court may summon as well as witnesses and experts if necessary. In this case it is more expressed the principle of investigation rather than the principle of reviewing.

In case of appellant or the opposing party absence, cannot be rendered a judgment because of disobedience or absence, which would be conducted in the procedure of the first instance, where would be concluded that party either waived or the appellant has withdrawn the appeal. In case of one or both parties are absent court acts based on these documents: appeal and the reply to appeal. As a matter of fact the procedure is conducted by acting on the basis of the documentation contained in the case file from the content of which depend decision-making concerning the appeal.

Court on summons shall notify the parties about legal procedural consequences of not attending the hearing. This procedural legal consequence consists in the fact that the court shall decide regardless whether the parties will reply to the summons or not (Article 191 of LCP). [34]

The court hearing for the main trial is conducted in accordance with the rules as in procedure of first instance court. Hearing is conducted with the presentation of case by a relevant judge, which has no right to express his opinion on the merits of the appeal. After the rapporteur's report, the verdict is read, or its attacking part. After this, the verdict is read or just the part involving the appeal and when needed the record in the final hearing in front of the court of first instance is read. Than, the appellant justifies its appeal, while the opposing party responds to the appeal.

Primarily in civil judicial procedure the administration of evidence is made directly, as it is in the first instance court, but there are also exceptions. Therefore also in the second instance court, if there is a proof that can't be used directly, the court decides to read the record covering the part of that specific proof (Article 192 of the LCP).[35]

Everything determined by this law regarding to the first instance court procedure adequately can be implemented in the procedures of the second instance court (Article 193 of LCP).[36]

---

33. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 373-374. See: Brestovci, Faik; *Op.cit.*, pg. 85-86.
34. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 375-376. See: Brestovci, Faik; *Op.cit.*, pg. 86.
35. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 376-377. See: Brestovci, Faik; *Op.cit.*, pg. 86.
36. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 378.

Civil Procedure Review, v.8, n.3: 79-92, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

4. BOUNDARIES OF EXAMINING THE ATTACKED DECISION

The second instance court acts only within limits of what was required by an appeal. Otherwise it would commit a violation of procedural provisions. Likewise, the appellant cannot be put in a worse legal position with the decision of the second instance court, than it was with the decision of first instance court (Article 203 LCP).

The second instance court shall only deal with that part of judgment for which was filed an appeal. The other part of judgment which was not attacked by appeal cannot be subject of review by the second instance court due to the fact that part has become final in formal and material meaning.

The second instance court is limited also concerning causes of appeal, so shall deal only with those causes that were submitted by the party in appeal. However, court *ex officio* shall consider essential the violations of absolute importance and whether the substantive law was properly applicable. Of course the court shall not deal with these issues by its own initiative, but only after the appeal has been submitted against the verdict of the first instance court.

The Law by article 194 of the LCP is limited to several essential causes of procedural provisions. Thus, the second instance court shall consider *ex officio* essential violations of absolute importance according to provision of the article 182, par. 2 sub. b), g), j), k) and m) of the LCP. Which implies for other violations of procedural provisions according to the provision of Article 182, par. 2 of the LCP, the law does not provide any clarification. Therefore, from the provision of Article 194 of the LCP it appears that the court of second instance shall not be able to deal ex officio with essential violations of absolute importance, according to article 182, paragraph. 2 subparagraph. a), c), d), e), f), h), i), l), n) and o) of the LCP.

The same applies also concerning essential violations of relative importance, since with these violations shall deal solely the second instance court if the appellant has requested such a thing (Article 194 LCP).[37]

5. DECISIONS OF THE SECOND INSTANCE COURT ACCORDING TO APPEAL

Article 195 of the LCP also provides that the second instance court shall examine the appeal either at the panel of judges hearing or at the main trial hearing, in detail and specifically by law determines how this court shall act. These decisions are defined in detail due to the fact by these provisions are foreseen all possible decisions of the second instance court:

a) Dismiss the appeal that arrives after the deadline, it's incomplete or illegal;

b) Annul the attacked judgment and reject the indictment;

37. Ibid., pg. 378-379.

c) Annul the attacked judgment and return case for re-trial at the court of the first instance;

d) Reject the appeal as unfounded and verify the attacked decision;

e) Change the decision of the first instance court.

Concerning these, the court of second instance decides either by a ruling or by a judgment.[38] The law does not require that a party in its appeal to propose to the second instance court what decision should be render according to its opinion. If a party does such a thing this is not binding to the court. But the second instance court may annul the attacked judgment although a party has proposed its amendment and *vice versa* (Article 195 LCP).[39]

5.1. Dismissal of appeal

The appeal presented after the deadline foreseeable by the court, the incomplete one, or the illegal one the court can reject with a decision of the first degree without setting a court session. According to Article 196 of the LCP, the appeal that is delayed, incomplete or not allowed can be dismissed by the second instance court with a verdict, if it wasn't done initially by the court of the first instance. [40]

5.2. The annulment of judgment and its return to retrial

The second instance court decides by ruling to annul the decision of the first instance court and returning the case for retrial at the first instance court. The LCP in Article 197 explicitly provides cases in which the court acts in this manner, the following cases are:

a) If in opposition with provisions of this law, the court has rendered a decision based on confession or the decision was rendered based on withdrawal from the lawsuit;

b) If any of the opposing parties with an illegal act, especially due to the irregular summon the party was not given the opportunity to attend the hearing and this act had influenced in rendering of legal and rightful decision;

c) If the court has brought a decision without conducting a main trial of legal case;

d) If a judge who according to the law should be excluded from the trial participated in bringing the decision.[41]

38. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 380-381.
39. See: Brestovci, Faik; Op. cit., pg. 87.
40. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 381. See: Brestovci, Faik; *Op.cit.*, pg. 88.
41. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 382. See: Brestovci, Faik; *Op.cit.*, pg. 89.

Civil Procedure Review, v.8, n.3: 79-92, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

When the second instance court revokes the decision of the first instance court and the case is sent to the same for retrial, the court can decide that another judge resides over the case. The second instance court may decide that the case to be retried by another court with the same subject matter jurisdiction if there is no other judge in the competent court which could be dealing with the retrial of the case (Article 198, par. 3 of the LCP).[42]

LCP by the article 199 referring to articles 197 and 198 LCP provides that immediately upon arrival of the case from the second instance, the court of the case should set a preliminary session or trial session for the main hearing, which should take place within thirty (30) days of the decision arriving from the second instance court, the court should also conduct all procedural actions, re-examine all contesting issues offered by the court of the second instance in their verdict.[43]

5.3. Annulment of judgment and dismissal of indictment

The second instance court by its ruling annuls the judgment and dismisses the indictment as inadmissible in all cases in which such a thing should have been made by the first instance court. The court acts like this when it concludes that the legal case submitted by an indictment does not fall within the judicial jurisdiction (Article 198 paragraph 1 of the LCP), when it concludes there is a negative procedural presumption (Article 198 paragraph 2), or when it concludes the absence dealing with the capacity to be a party, with procedural capacity and with the representation of a party, cannot be avoided even in a retrial by the court of first instance (Article 198 of the LCP). [44]

5.4. Rejection of appeal and confirmation of judgment

The court of the second instance through a decision will reject the appeal as ungrounded, thus verifies the decision of the first instance court if it decides that there are no causes that affects the decision, nor causes for which is entitled to deal according to the official task. In these two cases, this second instance court judgment becomes final in both formal and material meaning at the moment of delivery of the verdict to the parties (Article 200 LCP). [45]

5.5. Amendment of judgment

The second instance court by judgment changes the attacked verdict, deciding on the object of the dispute. According to article 201 of the LCP the second instance

42. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 383-384. See: Brestovci, Faik; *Op.cit.*, pg. 89.
43. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 384. See: Brestovci, Faik; *Op.cit.*, pg. 89.
44. See: Brestovci, Faik; Op. cit., pg. 89-90.
45. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 385. See: Brestovci, Faik; *Op.cit.*, pg. 88-89.

court can change the decision of the first instance court in the college session, or on the basis of examination of the main issue directly through a decision, if it decides that one of the under mentioned causes are presenting the appeal:

a) If it considers that there is a violation of the provisions of the contestation procedures expect the ones mentioned in the article 197 of this law;

b) If in the college session through a different evaluation of the file and proofs received indirectly, it ascertains different factual circumstances from the ones in the decision of the first instance court;

c) After direct examination of the case, based on new proofs, or based on newly possessed proofs administered by the first instance court, it ascertains different factual circumstances from the ones in the decision of the first instance court;

d) If it considers that the factual state in decision of the first instance court is rightly ascertained but substantive law has been applicable wrongly from the court of first instance;

e) If it has found that with the judgment of the first instance it is over passed the claim so that it is accepted more than what has been requested by the claim.[46]

The amendment of judgment by the second instance court decision cannot be done in disadvantage of the appellant, if it is the only one who appeals (Article 203 and LCP).

6. REASONING OF THE SECOND INSTANCE COURT DECISION

The LCP, by Article 204, dismisses the second instance court from the obligation to give a general reasoning of its decision. So this decision should not contain the reasoning part as it is the case with the decision of the first instance court. But in certain cases it must present the decisive facts on the basis of which the decision was rendered, as if it was the rendering of a judgment on the merits of the appeal. After all, any eventual violation of this provision can not constitute grounds for filing a revision because of the violation of procedural provisions.[47]

7. RETURNING FILE TO THE FIRST INSTANCE COURT

The second instance court returns all writs related to the case to the first instance court with a considerable amount of samples of its decisions to be sent to the parties and other interested parties, as well as a sample for the first instance court. The second

46. See: Morina, Iset - Nikçi, Selim; *Op.cit.,* pg. 385-386. See: Brestovci, Faik; *Op.cit.*, pg. 90.

47. Ibid., pg. 388. See: Brestovci, Faik; *Op.cit.,* pg. 91.

Civil Procedure Review, v.8, n.3: 79-92, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

instance court shall do this in a period of thirty (30) days from the day the verdict was rendered. This administrative judicial matter for sending the case to the first instance court is regulated by the provision of Article 205 of the Law on Contested Procedure.[48]

Conclusion

Conducting the contested procedure is characterized by a series of actions related to the procedural actions of disputable parties during the development of the first and second instance court proceedings.

It is the right of parties included to civil contest not to be satisfied by the first instance court decision, therefore, the plaintiff the respondent or both parties are entitled to attack the respective decision by appeal, which represents a regular legal remedy.

By appeal within determined legal deadline may be attacked all types of civil judgments regardless of whether the party participated during conducting contested civil procedure or not, respectively the court has ruled by judgment on the absence.

This circumstance is of special importance due to the fact it determines timelines to file an appeal which in principle is 15 days, with certain exceptions.

Maintaining legal deadline for submitting the appeal constitutes a fundamental and formal issue whether the court shall examine the appeal or the same will be rejected as delayed.

Court actions concerning the appeal are categorized into two groups, in those undertaken by the first and second instance courts. These actions should be well-defined so the appellant shall not be damaged concerning time aspect in terms of waiting for the appeal to be reviewed by the Court of Appeals that in judicial practice unfortunately occurs many times, this due to the fact that delayed justice is not any type justice.

References

Brestovci, Faik; *Civil Procedure Law II*, (Fourth Reprint) Prishtina, 2006.

Brestovci, Faik, Morina, Iset and Qehaja, Rrustem: *Civil procedural law, contested procedure*, Pristina, 2017.

Brati, Alban A .; *Civil Procedure*, Tirana, 2008.

Grupa autora, *Komentari Zakona o Parnicnom Postupku u Federaciji BH i RS*, Sarajevo, 2005.

Jaksiq, Aleksandar: *Gradjansko procesno pravo*, Beograd, 2013.

Morina, Iset - Nikci, Selim; *Commentary, Law on Contested Procedure*, (LPK – First Edition) Prishtina, 2012.

Ristic, Vukasin dhe Ristic, Millosin: *Praktikum za parnicu*, Beograd, 2000

Omari, Luan; *Constitution of the Republic of Kosovo in a comparative observation*, Tirana, 2009.

48. Ibid., pg. 388-389. See: Brestovci, Faik; *Op.cit.,* pg. 91.

Qehaja, Rrustem: *Appeal against the judgment in civil contested procedure*, "Jeta juridike", No. 1/2013, Tirana, 2013.

Tafaj, Kola, Flutura and Vokshi, Asim: *Civil Procedure*, Part II, Tirana, 2014.

Terihati, Franc: *Civil Procedure*, Tirana, 2015.

Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly by its resolution 217A (III) on December 10, 1948.

European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950.

The Constitution of the Republic of Kosovo, adopted on 09 April 2008, entered into force on June 15, 2008.

Law no. 03 / L-006 on Contested Procedure of the Assembly of the Republic of Kosovo, adopted on June 30, 2008.

Law no. 04 / L-118 on Amending and Supplementing the Law no. 03 / L-006 on Contested Procedure of the Assembly of the Republic of Kosovo adopted on September 13, 2012.

Civil Procedure Code of the Republic of Albania (Enriched with Judicial Practice), 1996.