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Judgments based on disobedience (non-compliance) and due to absence in contested procedure according to legislation of Kosovo

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Abstract: This paper analyses judgments of disobedience (non-compliance) and due to abstence in contested procedure according to the legislation in Kosovo. The authors in this paper, a special importance have given to the legal regulation of these judgments, the differences and similarities between them, exception from taking these judgments, and specifications for the exercise of remedies against these judgments. These categories will be discussed also based to the legal practice and legal doctrine.

Keywords: Civil Procedure; Contested civil procedure; Judgment based on disobedience (non-compliance); Judgment due to absence; Law for Contested Procedure in the Republic of Kosovo.

1. Introduction

In general, the civil law is divided into substantive and procedural law. This division applies also to civil law in the Republic of Kosovo, where we have civil law and civil procedure law. But, the civil procedure law is divided into contested procedural law, noncontested procedural law and enforcement procedural law.[1] The substantive and procedural law is closely

[1] This distinction egsist in Kosovo legislation, and there are three special laws: law on contested procedure, law on noncontested procedure and law on enforcement procedure

linked to each other and is sumplementare between them and neither can attain its goals and objectives separately from each other.

The civil procedural law is part of the positive law that includes the legal rules under which becomes protection and realization of subjective rights[2] which arise from civil-legal relations, while civil procedure is a way or method to perform the actions that are the subjects of a judgement in civil issue.[3]

In civil procedure, respectively in contested civil procedure a very important place is for court decisions.[4] LCP[5] LCP provides that decisions of the court in contested procedure are given in the form of the judgment and rulling.[6] The court decides on the claim by judgment while on the contentious procedure on obstruction to possession by a ruling. In the procedure for issuance of order payment the ruling is issued in the form of order payment. The decision rendered by the court on all other issues is in the form of ruling. The decision on the procedural expenses that is included in the judgment is considered a ruling.

Important for the reader of this paper is the form of judgments, so under the provisions of the LCP, the judgments in civil contested procedure mentioned above can be of different types depending on the factual and legal circumstances of concrete cases:

a). Partial judgment;

b). Judgment based on confirmation;

c). Judgment based on withdrawal from the claim;

d). Judgment based on disobedience (non-compliance);

e). Judgment due to absence;

[2] According to Professor Francesco Galgano, in his book ''private law'' published in 1992 and translated in Albanian from ''LUARASI'', Tirana 2006, subjective law is defined as a subjective interest protected by the objective law.
[3] Faik Brestovci, *e drejta procedurale civile*, Pishtinë 2006, f. 9.
[4] Profesor Faik Brestovci, në librin e tij e drejta procedurale civile, e botuar në vitin 2006 në Prishtinë, në faqe 23, shkruan: Me aktgjykim gjykata vendos për themeltësinë e kërkesëpadisë e cila është objekt i gjykimit dhe e cila konsiston në kërkesëpadi që parashtrohet me padi apo kundërpadi.
[5] LCP means Law on Contested Procedure and it will be written herafter.
[6] Ligji për Procedurën Kontestimore, 2008, neni 142.

f). Decision without a hearing of the case.[7]

Judgment of points (d) and (e), have a particular importance to the reader and all actors of civil legal system because represent innovation in LCP and find no enough expression in practice.[8] These types of judgments will be treated fairly thorough in following explications.

2. Notion

The primary purpose of every judge in civil procedure should be merits placing for issue in legal contested between plaintiffs and defendants. In order to achieve such a goal should be undertaken a series of procedural and material actions by the parties (plaintiff and defendant) and the court with her role *"dominis litis"* - master of the process, managing of judicial process at subjective procedural jubjects in the contested procedure. Court, the contested issue can end up with a court order, diponibile actions to any party and occurring relevant events outside the procedure. Depending on the actions of the litigants, may take one of the decisions in the form of judgments, rulling or court settlement[9] and with these to decide in the merited way for particular issue of civil legal of contested nature that some depend on the will of either party eg.renounce, renounce from the claim that the plaintiff depend on, whereas the affirmation of the indictment by the defendant, until the court settlement by both parties litigant plaintiff and the defendant.

However, court in some cases, despite the willingness of litigants is forced to decide in merits way through the judgment which may be different. Legislation has provided some of the judgments, but we will treat two of them:

2.1. Judgment based on disobedience (non-compliance);

2.2. Judgment due to absence.

[7] Ligji për Procedurën Kontestimore, 2008, neni 146, pika a, b, c, d, e, f.

[8] Autorët e këtij punimi kanë kontaktuar me disa gjykata themelore në Kosovë për të parë dhe marrë ndonjë aktgjykim për shkak të padëgjushmërisë (mosbindjes) dhe mungesës të nxjerrur në procedurën kontestimore. Fatkeqësisht, këto gjykata nuk kanë faqe elektronike (Web-site) ku i publikojnë vendimet e tyre. Megjithatë, autorët kanë arritur ta gjejnë në arkiven e Gjykatës së Qarkut në Mitrovicë një akgjykim për shkak të mos bindjes (padëgjushmërisë), me numër C.nr139/09, me anë të të cilit Gjykata Komunale e obligon të paditurin ta paguaj borxhin e telefonisë fikse në vlerë prej 129.62 eurove edhe përkundër faktit se i padituri nuk ka ushtruar përgjigjje në padi.

[9] Ligji për Procedurën Kontestimore, 2008, neni 415.

2.1. Judgment based on disobedience (non-compliance)

According to the provisions of the LCP [10] this judgment is new compared to the previous law, which was implemented in Kosovo and it presents a new challenge for theory and judicial practice. Judgment based on disobedience (non-compliance) is one type of judgment which basing on provisions of Kosovo LCP come under consideration if the defendant, within the period prescribed by law, does not present the reply for the claim in the court,[11] so the judge gives the judgment by which approves the request for the claim if the following conditions are fulfilled in cumulative way:[12]

a) if the claim and summons to reply to claim has been appropriately served to the defendant;

b) if the claim is founded on the evidence provided in the claim;

c) if the facts that support the claim are not in contradiction with the evidence from the claimant or widely known evidence.

Regarding the first condition and analyzing the intention in the context of the time of entry into force of LCP (2008), in judicial practice can be noticed an innovation and dual implementation of articles 394-399 of LCP. In compare with LCP of the year 1977, where the answer to the claim in writing form was not compulsory, with provisions of the LCP of year 2008, such a thing for the defendant is compulsory and it must be done within the legal deadline of 15 days excluding 7 days when it comes to the nature of economic disputes, and work dispute.[13] Seening from the context of judicial practice of this, there are resulting for interesting comparisons that how our courts in Kosovo in different regions in the context of the implementation of the provisions related to responding to the claim for the designation of the document sent to the respondent to answer in the indictment have used different names like

[10] Ibid, neni 150.
[11] Rrustem Qehaja "Përgjigja në padi" E drejta nr.2/2011, Prishtinë, 2011, fq.35-45.
[12] Vendimi I Gjykates së Qarkut në Cacak-Serbi Gz 1321/06 nga dt. 20.09.2006 lidhur me plotësimin komulativ të kushteve për dhënien e aktgjykimit për shkak të padegjueshmerisë.
[13] Vukasin Ristic&Milos Ristic "Praktikum za parnicu", Beograd 2000 fq 150-151

"call" under article 150, paragraph 1, under point “a” at LCP, “Notification” respectively “Rulling”, as it should have been.

The court will decide regarding taking this judgment only after the preliminary hearing is done for the cuase made by the plaintiff, which paves the way for court action that the lawsuit is sent to the respondent for answer in the indictment within the statutory deadline. Delivery date of the cause, the plaintiff along with other additional documents consist an important moment be indictment in procedural aspect from this time arises dependency court – litispendence[14], respectively from the date of filing of the lawsuit plaintiffs and he in this case should be announced with claims of the plaintiff and of course by this time starts to flow even the deadline for responding to the indictment, so basing on this and other continous reasons is of great importance for the court to know the exact date they receipted the cause by the defendant which usually verified through the return paper. Judicial practice from 2008 onwards has shown that our courts have dealt in a non-unique way and that some of the courts that have sent the lawsuit along with the invitation for the first preparatory session without consideration the first 7 days respectively within 15 days for a written response in indictment, then by not respecting the 30 days after receiving the written response from the respondent to send the invitation for the first preparatory session which under the provisions of the LCP should be sent at least 7 days before the court session will be hold.[15]

Court after having received the answer to the claim, must send a copy of it to the plaintiff and these operations must be performed within a period of 30 days under the LCP, with the possibility that if from the answer of the indictment will result an affirmative from assertion of the defendant and if the other conditions prescribed by the provisions of the LCP, the court will decide the judge based on affirmation.[16] From the view of court practice are also

[14] Ligji për Procedurën Kontestimore, 2008, neni 262

[15] Gjykata Komunale ne Podujeve C.nr. 351/09, C.nr. 613/09, Gjykata Komunale ne Kline C.nr. 278/10, Gjykata Komunale ne Viti C.nr.32/10 ne te cilat raste bashkeautori I pare ka qene pale ne procedure sipas autorizimit dhe ka verejtur nje varg shkeljesh nga gjykatat ne zbatimin e LPK ne fuqi lidhur me dergimin e padise per pergjigje ne padi, ftesat per séance duke mos respektuar afatet, ne disa raste raste eshte derguar ftesa duke mos respektuar aftin ligjor, ne disa raste eshte derguar Akvendimi per pergjigje ne padi, ndersa vete padia me shkresa tjera percjellese ka munguar etj.

[16] Ligji për Procedurën Kontestimore, neni 148.

noted such cases where the courts have sent invitation only to certain judicial session by passing on sending the indictment, and the moreover by not giving the defendant a legal opportunity to answer in the indictment and thus by putting the same one in an unequal position compared with the opposite party the act or unact this one that send in violation of basic principles of contested civil procedure relating to equality of litigants. From the provisions of LCP especially article 150, paragraph 1 under "a" results: "... regular delivery of the claim and let's better call it a ruling to answer in the claim". In theory even though these kind of actions may seem simple and without any complication, our court practice has shown the opposite since our courts are facing with significant difficulty associated with submission paper of different papers, because of double labels settlements, addresses, change of them, and all this situation as a result of the events of year 1999, the population of new settlements, the creation the new unurbanized neighborhoods etc. those circumstances which have a common denominator "difficulty" of work of the court in implementation of the law respectively processing of case. Also, may happen that an unauthorized person to receive the letter which is sent by the court, or the same to annihilate etc. and in such cases although the signed receipt will send back to the court by the same recipient, it is unable to know exactly if the paper is received by the party to which it is addressed or to any ruthless, this thing is valid even if the spouse of the claimant accepts the invitation, but does not sign the same one a kind of case which should be evidenced in court.[17]

Therefore, the satisfactory fulfillment of this statutory requirement for obtaining a judgment on disobedience remains a challenge for our courts and wider, and this should be taken with large reserves to be considered as fulfillment of the required condition for obtaining a judgment of this nature. According to the article 150.1 under "b" that courts take this kind of judgment, it is required to be fulfilled another condition, such as: *" if the claim is founded on the evidence provided in the claim"*, in relation to this it should be emphasized that the plaintiff through his indictment, his claims should argue with concrete evidence from which claim based

[17] Vendim i Gjykatës së Qarkut në Nis-Serbi Gz.nr. 1256/06 nga dt. 15.05.2006 sipas të cilit është prishur aktgjykimi I gjykates së shkalles së parë për shkak të konstatimit se ftesa për seancë i është dhënë bashkëshortes të padituri, por e njejta nuk e ka nënshkruar ndërsa dorezuesi në menyre të njënshme ka konstatuar në fletekthes një gjë të tillë gjë qe nuk argumenton faktin e nxjerrejes së aktgjykimit për shkak të padegjueshmerise apo mosbindjes.

on substantive and procedural provisions that in the same time constitute the proposing that what kind of judgment the court must take regarding the certain contested issue alleged by plaintiff for recognition, verification or change of legal status.[18] Depending on how much the plaintiff in his indicment arrives or not to make his claims based and argumented, the court by precious this reliability in legal-material and legal-procedure provisions may decide with a decision to refuse to the claim as unfounded or judgment because of disobedience. This kind of judgment is based on the presumption of plaintiff and cannot compare the particular content of his reasoning to other merited types of judgments except with the judgment because of the absence of which has significant similarities.

According article 150, paragraph 1 under the 'c' in order the court to get this kind of judgment is required to be filled following condition: *"if the facts that support the claim are not in contradiction with the evidence from the claimant or widely known evidence".* For the fulfillment of this condition, prior the court must analyze plaintiff request on the claim and compare the facts and proposed proves by the same one if these is any contradictions between them,[19] because although for the phase we are talking about these facts are only assumptions until there are not opposite argues. So, not surprisingly the legislator has foreseen "respond to the claim" on the basis of which the defendant may rebut the plaintiff alleged facts through arguments with concrete evidence. While, According to the article 150, paragraph 2 is fixed up the "negative" aspect, respectively conditons when the court cannot take judgment because of the disobedience despite fulfillment of the above conditions and that in cases where the court finds that it is for the request which the parties have no right to dispose freely under Article 3, paragraph 3 of the LCP.[20] In this context it should be emphasized that the legislator has created the possibility that contentious issue between the claimants to finish in mediation or proceeding in the court for which the judge shall inform the parties as his official duty with such

[18] F. Brestovci, vep e cit, fq 153.
[19] Aktgjykimi Gjykata e Qarkut Beograd Gz I 6137/07 nga dt 19.12.2007 sipas te cilit ester konstatuar shkelje me rastin e zbatimit te gabuar te drejtes materiale lidhur me konstatimin e numerit te pikeve per te punesuarit lidhur me realizimin e te drejtes banesore.
[20] Ligji për Procedurën Kontestimore, neni 3.3 permbane: “Gjykata nuk do ti miratoje disponimet e paleve qe jane ne kundershtim me: a) rendin juridik, b) dispozitat ligjore dhe c) rregullat e moralit publik”.

a proposal in order to implement the principle of availability, but the court will not approve the litigants if the same are inconsistent with: a). Legal order, b). Legal provisions and c). Moral public rules.

According to the article 152, paragraph 3, is given the opportunity to delay court setting of this kind of judgment if the same one needs clarifying the circumstances in paragraph 2 and to take proper notice, in cases where the court has no need for this and it is about deposits with which parties cannot deposit freely. Respectively, actions of the parties get in contrary to Section 3.3, so the court cannot decide with judgement because of the disobedience.

Deferrals of making this kind of judgment that can be done even in cases where there are doubts about sending in a regular way of the cause to the defendant for the responses in the cause in accordance with the provisions of the LCP, although the law has not provided deadlines associated with this circumstance, we consider that for verification of this circumstance would be enough that the court to postpone the merit decision on 30 days respectively 6 months, depending on whether the party is inside or outside the territory of the state as it is regulated in the legislation of other countries.[21] Furthermore, according to the article 150, paragraph 4, results that the judgment based on disobedience cannot be obtained by court side *"...If the claim based on the facts presented is considered unfounded, the court will initiate a preparatory hearing and if during that proceeding the claimant does not change the claim, the court renders a decision by which the claim is refused''.*

These cases in court practice are linked to the issue of the contested nature between plaintiffs and defendants where the first one cannot argue in legal-formal aspect, legal relationship which "*de facto*" existed, but "*de iure*" missing arguments. Usually in such situations the plaintiff alleges that the defendant owed a certain amount of money in the name of realizing sales, while the defendant through reply in cause argues the opposite that there is no passive identification and liability between them had never any written contract.

Therefore, in order to respect the principle of the contradictions court must appoint the first preparatory session to hear the claims of litigants and if the plaintiff does not change the

[21] Sluzbeni glasnik RS nr. 72/2011.

cause, the court will take a judgment which rejects the plaintiff's claim therefore will not decide with judgment because of the disobedience even if the defendant does not attend the session because he through reply in the cause has submitted his opinion. Regarding this, there are two important issues to be raised for discussion: first, if the defendant arrives in the courtroom just before the end of session, means late and the second one is if the defendant before the end of session issues with vetinciativ courtroom. In the first case we consider that the delay of the defendant can be interpreted as the same would have come with time, while in the second case would have to be implemented provisions for non-compliance of the court.[22]

Based to the article 150, paragraph 5 is regulated the issue that has to do with that: *"the appeal against decision of the court which rejects the proposal of the claimant for contumacious decision shall not be permitted".* Regarding with this, also arises the issue if the judgment based of the disobedience should be taken by the court according to the official duty or there should be any proposal of the plaintiff? Regarding with allowing the appeal consider that with filling-changing that should be made in LCP, however the right to appeal should be known to the dissatisfied parties because of substantial violation of disposition of LCP and erroneous application of material law, while judgment in cases such cannot be attacked because of an erroneous conclusion and because of incomplete facts of state. According court practices in Kosovo are observed irregularity,[23] although our courts hesitate to take this kind of judgment, while in the region otherwise is different.[24]

Currently there is a legal way that if the court decides with a judgment based on the disobedience to the unsatisfied party which is usually the respondent through return to the previous state (*restitutio in integrum*), to require the realization of the right within the legal set deadlines, but in this case should given in consideration the date of receipt of the judgment because in some cases the court gives the clause of the omnipotence at the expiration of the

[22] Ligji për Procedurën Kontestimore, 2008, neni 288-295.
[23] Gjykata Komunale e Gjakoves lidhur me akgjykimin C.nr. 231/10, në permabjtje të këshilles juridike i njeh palës së paknaqur të drejtën e ankeses kundër aktgjykimit per shkak te mosbindjes, e që përben shkelje te nenit 150, paragrafit 5 te LPK-së.
[24] Aktgjykimi i Gjykates Themelore në Doboj Bosna Hercegovina dhe Republika Srpska nr. 85 0 P 006064 09 P dt. 30.11.2009, ne keshillen juridike e udhezon palen e paknaqur ne te drejten e propozimit per kthimin ne gjendjen e meparshme ne pajtim me LPK te BH dhe RS.

deadline given to submission of proposal for return into previous situation, while some courts bind the date of omnipotence relates with the date of receipt of the judgment. Some authors are of the opinion that against judgment we are talking about can also be used extraordinary legal remedy repetition of the procedure.[25]

According to the article 150, paragraph 6, the court may take a judgment based on the disobedience without listening litigants in cases where it is necessary to postpone the judgment due to the receipt of additional information regarding the issue.[26] This issue does not mean that the court will take a judgment based on the disobedience in cases where it is verified that it is about the party dispositions in contrary with the rules of public morality or whether it is determined that the respondent is invited to the session in irregularly way. In the first case the court will take a judgment which would reject the plaintiff's cause as baseless, while in the second case we consider that the court should not take a judgment because of the disobedience, but must repeat the action of sending the decision to response for the cause.

The court may defer making a judgment because of the disobedience even in cases where it determines that there are deficiencies in procedural regarding with the representation by proxy, postulates-procedural ingenuity etc. and if these deficiencies will be avoid then opens the way for merit placement with judgment because of the disobedience, or otherwise the court should take a judgment which denied the cause.

2.1. Judgement based on absence

According to the legal provisions of LPK for Kosovo[27], along judgment because of disobedience is regulated due to absence of judgment which unlike the first one does not present any particular innovation because that was recognized by the LCP of year 1977. If we compare these two types of judgments we will notice many similarities, so in this part we will focus only in distinguishing paragraphs

[25] Marija Salma "Presuda zbog izostanka", Zbornik radova Pravnog fakulteta u Novom Sadu nr. 2/2012 fq. 154
[26] Jozo Cizmic "Presuda zbog ogluhe-nova presuda u Hrvatskom parnicnom postupku" Artikulli eshte publikuar ne HPR 2003/9 dhe Inf Novi 2003/5168.
[27] Ligji për Procedurën Kontestimore, 208, neni 151.

Based on article 151, paragraph 1, is noted that: *When the charge is not sent for answer, but it is sent only together with the invitation for the preparation session, and he doesn't come for the session until it's finished, or in the first session for the main elaboration, if the timing for the preliminary session was not determined, the court with proposal from the plaintiff or in accordance with the official task issues a decision by which it approves the claim charge (decision due to the absence) if these conditions are met:*

a) if the accused was invited regularly to the session;

b) if the accused never contested the request for charges through a preliminary pre-note if the charged party didn't oppose it;

c) if the depth of the request for charges is based on the facts shown in the charge;

d) if the facts on which the charges are based are not contradictory to the existing proofs presented by the plaintiff or other facts known worldwide;

e) if there are no circumstantial notes from which it can be determined that the charged party was stopped due to justified reasons no tot attend the session.

Issuing this judgement, when the provided conditions by law are provided, based on the assumption that the defendant by standing passively accepts as accurate the facts presented in the indictment. This judgment won't treat as punishment against the defendant, but as a result of access to the object of judgment specifically. In science is expressed the opinion based on it the term "judgment due to absence" is not completely appropriate. According to him, taking into consideration all the conditions under which it is given, the most appropriate term will be "judgment because of release-inaction." Judgment due to absence is also called "contumacious" (from lat. Contumax, stubborn, disobedient).[28]

To give a judgement because of absence must be filled, expect procedural presumptions that must be filled for the granting of any special judgment even these special procedural and substantive assumptions. One of these assumptions constitutes the regular call of the respondent for the session. It is considered that the call is regular if the respondent together

[28] F. Brestovci "E drejta procedurale civile II", Prishtine, 2006, fq 36

with the invitation is delivered the cause; if calling letter contains a warning about the consequences of not attending the session; if calling letter was sent to the defendant at least seven days before the session. In order to verify the circumstances, the court may postpone the granting of the judgment due to absence according to what is emphasized for judgment becase of disobedience.

If we compare the conditions that must be fulfilled for receiving the judgment due to absence and article 400, paragraph 1 and 4 of the LCP results that the court after receiving the response to the cause in principle announce preparatory session respectively after crossing to the deadline of 30 days from receipt of the response to the cause. The court is obliged upon the submission of the complaint to the respondent through the same decision to declare for the legal consequences. Therefore, the arised question will be if the provisions of LCP related with legal obligation in cause as preliminary action, before sending the inviting for a court session on one side, and on the other fusion-union, these two operations in a single action, presents harmony or disharmony-contradictions between articles 394 and 400 on one side, and article 150, paragraph 1, point "a" on the other.[29]

3. Similarities and Differences

The common thing to both types of judgment is what the court will decide on one of these two types of judgment only if the defendant has not challenged the plaintiff's cause. Verdict due to be taken by the disobedience of court if the respondent within the prescribed period will not deliver reply for cause in writing in accordance with the legal provisions of the LCP, while due to absence, judgment will be taken by the court in when together with lawsuit plaintiff was served the summons in the preparatory session of respondent lacks the preparatory session or at the first session for the main examination preparatory session if it is not maintained at all and the defendant does not contest the claim and proposes the issuing of

[29] Shih praktiken gjyqesore të ndjekur nga Gjykata Themelore ne Prizren dega Dragash C.nr. 67/2013, ku gjykata pales se paditur i dergon padine per pergjigje ne padi se bashku me ftesen per séance pergatitore duke mos respektuar afatin ligjor prej 15 dite per pergjigje ne padi dhe afatin prej 30 dite pas pranimit te pergjigjes ne padi per caktimin e séances, ku ne kete rast bashkautori I pare ka qene I nderlidhur si pale sipas autorizimit.

this judgment.[30] For the judgment due to lack is important neglects the court by defendants in the context of mospjesmarrjes at the hearing, while the verdict because of dissatisfaction with the court neglects important in the context of prashtrimit not reply to the charge in writing and within the legally defined. The same applies to cases where the answer to the claim submitted in written form, but the same has substantial shortcomings of the causes of which the court cannot proceed and act similar in these cases as well as the filing of a lawsuit where the defendant given a fixed term of court to avoid the shortcomings in an answer to a lawsuit if the same is incomprehensible or incomplete for the purpose of removing such deficiencies.[31] The content of some legislations resulting application of double standards regarding "claim" and "respond to the claim" in terms of providing access for removal of deficiencies when we ehte answer questions in a lawsuit, so if the latter has the meat shall be deemed not been served at all.[32]

This treatment is not equal between the plaintiffs and defendants and it is considered that constitutes a violation of the principle of equality of parties in contested procedure and the implementation of double standards for parties. In the context of the kinds of judgments that we have focused on one hand, and on the other hand, if we compare systems that recognize only the kind of judgment because of disobedience, to the same one we find the elements of judgment due to absence such is the case when the defendant not take part in certain preparatory session for review of proposals related with the main session.[33]

The common thing of both types of judgments is that the defendant should be invited on a regular way. The legal basis of the cause must be brought by the facts presented in the content of the cause. The facts shown in the cause cannot be incontrary to the evidence or facts known globally. Also it is necessary not to talk for the circumstances known by all others that have hindered the participation of the defendant in the court session.

[30] F. Brestovci vep e cit fq 35.
[31] Ligji për Procedurën Kontestimore, 2008, neni 397.
[32] M. Salma vep e cit fq. 144
[33] Rechberger Simotta, Zivilprozessrecht, Ëien 2003 fq. 389

None of these judgments cannot be taken if it is about disposal with which parties cannot freely dispose and that conflicts with the legal order, legal provisions and public morality rules. Both judgments have a common purpose and it is the principle of efficiency of contested procedure and combined discipline with the principles of formal truth.[34]

In some systems for making the judgment because of disobedience it is necessary proposing the plaintiff as there was the case in the former Yugoslavia and some other countries[35], but there are also other system that this initiative besides plaintiff have left in the competence even of the court that under official duty to decide on this[36].

These two kinds of judgements are so similar, as much as some authors commenting upon the provisions of the Code of Civil Procedures in the part that pertains to these judgments refrain from commenting on the above-mentioned two kinds of judgments[37] by focusing only on one of them.

4. Conclusion

Courts in the Republic of Kosovo should draw as much judgements based on disobedience (non-compliance) and absence when the provided conditions by the legislation in force are fulfilled, because through these judgements protect the civil subjective rights of the citizens in civil legal relations. No way, this should not be understood that with these judgments violate these rights and freedoms for a fair court session.

Courts during deciding for these two judgements must unify procedures since the beginning until the final decision.

Judicial Council in coordination with the Judicial Institute should organize emphasized trainings with judges of civil field respectively with these kinds of judgments in order to eliminate final dilemmas for extracting these judgements.

[34] Sanja Sremcev "Presuda zbog izostanka po novom zakonu o pranicnom postupku",zbog izostanka dt. 24/01/2014.
[35] Ligji për Procedurën Kontestimore i RSFJ-se I vitit 1977 dhe ai I Maqedonise.
[36] Ligji për Procedurën Kontestimore I Kroacise, neni 332.
[37] Iset Morina&Selim Nikçi "Komentar i Ligji per proceduren kontestimore", Prishtine 2012 fq. 316

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