

Revision against judgment in contested procedure, a challenge or legal certainty

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Abstract

In this scientific paper shall be handled a special segment of contested procedure concerning the possibility of submitting revision as one of the extraordinary legal remedies against rendered judgment in contested procedure in a context of critical overview between amendment and supplement of contested procedure current law in comparison to previous law of contested procedure and contested procedure laws of region countries including the former Yugoslav Republic of Macedonia, now The North Macedonia and Bosnia and Herzegovina. Frequent amendments of laws question citizen legal certainty and potential investors especially in those countries with fragile democracies that are going through transition phase, as is the case in Kosovo. Revision is one of the extraordinary legal remedies of appealing final court decisions rendered by the second instance court, which may be submitted due to numerous causes within limits and deadlines provided by law. By revision, may come to correction of substantive or procedural law eventual omission made in the second instance court trial.

Keywords: *contested procedure, judgment, revision, Supreme Court, extraordinary legal remedies.*

JEL Classification: K40, K41

1. Introduction

Subjects of law such as natural and legal persons enter into legal-civil relationships and into other relationships, stipulated by legal provisions. Subjective law gives to a person a certain number of authorizations in order to protect his rights recognized by applicable laws. In this regard, also the procedure civil law is part of a state law or a society, which includes all rules through which subjects of law may protect and exercise their rights when considering that they have been violated in different civil law relations. Civil procedure presents a formal and strict way through which is achieved the implementation of substantive law in a concrete situation of civil-legal character. Unlike substantive law, the civil proceedings norms, and those regulating contested procedure, have a mandatory legal character (*ius cogens*).

Civil procedure legislation of Kosovo determines the legal remedies of appealing the second instance court decisions (Court of Appeal), which have become final, against which the parties are entitled to submit the legal remedy in order to request from the court the annulment respectively to change the decision.

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Means of appealing court decisions according to Kosovo civil legislation are divided into ordinary (regular) and extraordinary legal remedies.

Regarding the appeal as an ordinary legal remedy of appealing court decisions, the Kosovo lawmaker has ensured that this legal remedy may be submitted against judgments rendered by the first instance court in contested procedure. This right of citizens is guaranteed by the Constitution of the Republic of Kosovo of 2008.² That is so for the simple reason, the protection of citizens' rights to procedure, because in the first instance court procedure, may occur violations of different legal nature, such as violations of procedural provisions as well as violations of substantive law provisions.

2. Meaning of revision

Revision in Kosovo has been regulated by legal provisions that can be found in Chapter XIV of Law No. 03/L-006 on the Contested Procedure of the Republic of Kosovo (LCP) of 2008, respectively Law no. 04/L-118, on amending and supplementing the Law No. 03/L-006 on the Contested Procedure of 2012 (LNPLPK). More specifically, revision is regulated by articles 211-231 of the LCP. By revision, the dissatisfied party appeals the final judgment rendered in the second instance court according to appeal against the first instance court judgment.³

Revision serves to appeal final judgments respectively those that have become final. Revision is an independent legal remedy, because it may be submitted against court decisions rendered in the second instance court, when it comes to fulfillment of requirements stipulated by law. Revision is a devolutionary, non-suspensive and restrictive legal remedy, a bilateral legal remedy against second instance court final decisions.⁴

The power to review revision lies within the Supreme Court of Kosovo.⁵ This competence, in addition to the LCP, has been determined by the Law on Courts of the Republic of Kosovo Article 26 paragraph 2. Regarding the court composition, a panel of three (3) judges acts in revision procedure.⁶

Revision against judgment is a legal remedy which may be submitted by the parties to contested procedure, firstly in order to ensure material legal and procedural legal legality of a court decision on the concrete case.⁷ Revision may be used in order to appeal the Court of Appeal decision entirely or only a part of it,

² http://kryeministri-ks.net/wp-content/uploads/2018/03/Kushtetuta.e.Republikes.se_Kosoves, accessed on March 20, 2019, time 10:20 min.

³ Faik, Brestovci, *Civil Procedure Law II*, Pristina, 2004, p. 95, Brestovci, Faik, Morina, Iset, Qehaja, Rrustem, *Civil Procedure Law - Contested Procedure*, Prishtina, 2017, p. 433.

⁴ Mihajlo, Diika, *Gradjansko parnicno pravo*, Pravni ljdkovi, X. knjiga, Zagreb, 2010, fq. 259, Aleksandar, Jaksic, *Gradjansko procesno pravo*, Beograd 2013, op. cit. p. 631.

⁵ Article 212 of the Law no. 03/L-006 on Kosovo Contest Procedure of 2008.

⁶ *Ibid*, article 15, paragraph 2 of the Law no. 03/L-006 on Kosovo Contest Procedure of 2008.

⁷ Arsen Janevski, Tatjana Zoroska-Kamilovska, *Civil Procedure Law - Contested Law*, First Book, Skopje, 2009, p. 413.

when it comes to fulfillment of requirements concerning its submission. In general, revision basically is a legal remedy, because by submitting it, it may come to appealing of a certain number of judgments and rulings rendered by the second instance court.

The importance of revision lies in the fact that the dispute between the parties shall be resolved fairly.⁸ Through revision is ensured fair and lawful trial as well as unification of legal order with equal application of law throughout the country.⁹ Bearing in mind the fact the Supreme Court of Kosovo decides on revision, this legal remedy is important also in terms of judicial practice unification in lower courts. The Supreme Court when required and depending on the case, determines principled attitudes and legal opinions for important matters for uniform application of laws by courts in the territory of Kosovo.¹⁰ Principled attitudes and legal opinions of the Supreme Court of Kosovo exercise an important function in law and jurisprudence. The Supreme Court of Kosovo opinions, together with those of doctrine, give a significant contribution to elaborate interpretation of applicable legislation, which should be followed and applied by courts in numerous cases they adjudicate on daily basis.¹¹

Revision is also relevant to the complete and correct application of Article 6 (Right to a fair trial)¹² of the European Convention on Human Rights and Article 13 (Right to an effective remedy) of that Convention, because through this remedy can eventually be corrected the omissions made in the first and second instance court proceedings, whether procedural or substantive law omissions.

However, the European Convention on Human Rights does not foresee the obligation of states to regulate the issue of controlling final decisions of courts in domestic law.¹³

2.1. Judgments which may be appealed by revision

The Court of Appeals judgment which has become final it does not mean that it cannot be changed or be annulled through extraordinary legal remedies, which are considered an exemption to legal certainty.¹⁴ Provisions concerning the possibility of submitting revision have a number of substantive restrictions. Limitation of revision as an extraordinary legal remedy should be seen by different aspects, and in particular: *a) in relation to judgments which may be appealed by*

⁸ Faik, Brestovci, *op.cit.*, fq. 95. Shih Milisav Cizmovic, Biljana Duricin, *Gradansko procesno pravo*, Podgorica, 1997, fq. 278-281.

⁹ Visoko sudsko i tuzilacko vijece Bosne i Hercegovine, Modul 4 – Gradjanska Oblast – Vanredni Pravni Ljekovi, Sarajevo, 2006, p. 9.

¹⁰ Article 26, paragraph 4 of the Law no. 06/L-054, for Courts, Official Gazette of the Republic of Kosovo no. 22/18 December 2018, Pristina. <https://gzk.rks-gov.net> access to 20.03.2019, at 10:40.

¹¹ Alban Abaz Brati, *Civil Procedure*, Tirana 2008, p. 467.

¹² Visoko sudsko i tuzilacko vijece Bosne i Hercegovine, Modul 4 – Gradjanska Oblast – Vanredni Pravni Ljekovi, Sarajevo, 2006, p. 9.

¹³ Aleksandar, Jaksic, *Gradjansko procesno pravo*, Beograd, 2013, p. 633.

¹⁴ Amra Hadzimustafic, *Dopustenost izuzetne revizije*, Sarajevo, 2012, p. 1.

revision; b) concerning the type of disputes in which has been rendered the second instance court judgment; and c) regarding causes for which judgment may be appealed respectively to be revised.¹⁵

In the following we shall refer to a case from judicial practice which is related to legal interest. Thus, the Supreme Court by ruling Rev. No. 11/2015 has dismissed it as inadmissible the plaintiff's revision due to the lack of legal interest. The Supreme Court in its reasoning among other things has emphasized: *the plaintiff has worked to the respondent. By administrator's decision dated April 17, 2008 he was suspended from his workplace. By respondent's decision dated April 22, 2008 the co-administrator has annulled as ungrounded and unlawful the decision of April 17, 2008 on suspension from work and duties for the plaintiff. The plaintiff by submitting indictment has requested from the court to annul the decision of 17 April, 2008 on suspension from work and to recognize all the labor rights. The Supreme Court of Kosovo considers that legal actions of lower instance courts are fair and based on applicable legislation, due to the fact that the plaintiff requests the annulment of a decision which has been revoked by the respondent, whereas by article 2, paragraph 4 of the Law on Contested Procedure is foreseen that the party needs to have a legal interest concerning indictment and other procedural actions that may be conducted to proceedings because the Law on Contested Procedure article 1 sets out procedural rules based on which the court examines and resolves disputes from civil legal relationships of natural and legal persons whereas in the concrete case object of dispute is a ruling annulled by the respondent and the case according to submitted indictment cannot be handled as contentious between the parties. As a legal consequence of violating the principle of legal interest existence, the indictment should be dismissed as ungrounded.*¹⁶

Based on judicial practice, revision most commonly is submitted by the party which has not been successful in its appeal against judgment, therefore that party of course has the legal interest to submit revision.¹⁷ However, sometimes the party which does not submit an appeal against the first instance court judgment, could have legal interest for submitting revision.¹⁸ These are the situations when the party only partially succeeded in dispute, hence the indictment has been only partially accepted. Therefore, also the party which did not submit an appeal against the first instance court judgment, could have legal interest to submit revision. The presumption is that the second instance court in relation to the other's party appeal has accepted it.¹⁹

According to Article 211 paragraphs 1, 2, 3 and 4 of the LCP of 2008, the revision may be submitted: *"Against the second instance court judgment, the*

¹⁵ *Ibid.*

¹⁶ The Supreme Court of Kosovo, Judicial Practice Bulletin, Volume 2, Prishtina, 2015, p. 94-95, (Ruling of Supreme Court of Kosovo Rev. No. 11/2015, On 2.4.2015).

¹⁷ Iris Govic, *Revizija u svijetlu posljednjih izmjena i dopuna Zakona o parničnom postupku (ZPP/03) i na njima utemeljenoj sudskoj praksi*, Zbornik Pravnog Fakulteta Sveuceliste u Rijeci, (1991) v. 29, br. 2, 1093-1128, Rijeka, 2008, p. 1095.

¹⁸ Iris Govic, cited paper, p. 1095.

¹⁹ *Ibid.* p. 1095.

parties may submit a revision within thirty (30) days from the day on which the judgment was delivered; Revision is not permissible in property disputes in which the lawsuit relates to cash claims, delivery of a thing, or fulfillment of any other promise, if the value of dispute object in the appealed part of judgment does not exceed the amount of 3.000 €;

Revision is not permissible in property disputes in which the indictment is not related to money claims, to delivery of a thing or by fulfillment of any other promise, if the value of dispute object does not exceed the amount of 3.000 € and exceptionally also when it comes to indictment from paragraphs 2 and 3 of this article, revision is always permissible:

- a) In alimony disputes;*
- b) In disputes related to payment of damage for lost food due to the death of food provider;*
- c) In employment relationships disputes initiated by employee against the decision concerning employment relationship extinction.*

According to Article 211 of the LCP, revision basically may be submitted against the Court of Appeals judgments. Hence, the lawmaker excluded the possibility of appealing first instance court judgments by revision. Therefore, revision may be submitted only against the Court of Appeals judgments, by means of which is decided concerning appeal against the first instance court judgment.²⁰ Although not foreseen by law, as a pre-condition in order to submit revision is the submission of appeal against the first instance court judgment. Hence, without submitting the appeal against the first instance court judgment from any party we would not have a second instance court judgment, which could have been appealed by revision. There are also numerous restrictions which make it impossible the submission of this legal remedy in property claims. In these disputes revision is not permissible if value of dispute object does not exceed the amount of 3.000 €²¹ in the appealed part of judgment, respectively the value indicated to indictment, regardless of the fact whether the claim is made with money demand, delivery of a thing or fulfillment of any promise or not. The difference between the second and third paragraph of Article 211 abovementioned relates to money claims and non-money claims. Due to this nature of dispute object, in situations from the second paragraph, judgment may be partially appealed, whereas in situations from the third paragraph, judgment may be appealed only in its entirety. Rules concerning determination of value of dispute object are foreseen by Articles 30-36 of the LCP. Property claims usually relate to claims for non-fulfillment of various contractual obligations by one party, creditor claims against debtor, and claims for fulfillment of any cash obligation from execution of the will, and so on.

Regarding commercial disputes, the lawmaker has foreseen that revision is not permissible if the value of dispute object in appealed part of final judgment does not exceed the amount of 10.000 €.²² By referring to a case from the Supreme

²⁰ Iset Morina, Selim Nikçi, *Commentary of the Law on Contested Procedure*, Prishtina, 2012, p. 398.

²¹ Article 211.2 of the Law no. 03 / L-006 on Kosovo Contest Procedure of 2008.

²² Article 508 of the Law no. 03 / L-006 on Kosovo Contested Procedure of 2008.

Court of Kosovo practice we note that: *By the Court of Appeals of Kosovo judgment Ae.nr.169/2013 dated April 28, 2014 has been rejected as ungrounded the appeal of respondent and has been verified the Basic Court of Prishtina-Economic Department judgment C. no. 577/2012 dated September 11, 2013 by means of which in part I of enacting clause has been approved the indictment of plaintiff and the respondent was obliged to pay to the plaintiff in the name of regressing the damage the amount of funds of 6.952,88 € together with an interest rate of 20% per annum which shall be calculated starting from 31 August, 2009 up to the final payment within 7 days from the day of rendering judgment, while in part II of the enacting clause the respondent has been obliged to pay to the plaintiff the costs of contested procedure in the amount of € 1,056.00 within 7 days from the day of validity of this judgment.*

From case file results that the value of dispute in plaintiff's indictment submitted to the court on September 22, 2011 is 7.143,71 € whereas the same value has been deducted in the amount of 6,952.88 € with submission for precision of indictment height dated September 13, 2013, whereas with final judgment appealed by revision the value of dispute is set out in the amount of 6.952,88 €. By provision of Article 508 of the Law on Contested Procedure (LCP), it is foreseen that revision is not permissible in commercial disputes if the value of dispute object in the appealed part of final judgment does not exceed the amount of 10,000 €. Having in mind the fact that the value of dispute object in this contentious case is set out in the amount of 6,952.88 € with the submission of the plaintiff dated September 13, 2013 and it was approved by the first instance court final judgment, it appears that the established amount of the claim does not exceed the amount provided by the provision of Article 508 of the LCP, which means that according to this provision, revision in this legal matter is not permissible and being as such had to be dismissed. Based on what was above emphasized and in terms of implementing article 211 in relation to article 505 of LCP is decided as in enacting clause of this ruling.²³

The value of dispute object in property disputes should be assigned by plaintiff to the indictment. As the value of dispute object is taken into account only the value of the main claim. Interest, procedural expenditures, contracted penalties and other accessory claims are not taken into account if they do not constitute the main claim.²⁴

In the fourth paragraph of article 211 above, has been foreseen exemptions from paragraphs two and three of the same article concerning property disputes, when revision is always permissible, despite the value of dispute object. Firstly, dealing with family disputes related to: a) alimony; b) disputes over compensation of damage concerning lost food, due to the death of food provider. Regarding the point (a), and also based on Article 336 of Law 2004/32 on Family of Kosovo, where revision is permissible in all disputes concerning financial maintenance and

²³ The Supreme Court of Kosovo, Judicial Practice Bulletin, Volume 2, Prishtina, 2015, p. 92-93, (Judgment of the Supreme Court of Kosovo, Rev. No. 43/2014, on September 22, 2014).

²⁴ Article 30 of Law no. 03 / L-006 on Kosovo Contested Procedure of 2008.

alimony, this provision should be understood in this regard including permitting revision in all disputes related to alimony, respectively alimony for children and former spouse, as foreseen by the provisions of the Family Law.²⁵ Regarding the point c) of the third paragraph of Article 211, revision here as well is always permissible in labor disputes against the decision for employment relationship extinction. As the condition for permitting revision is therefore employment relationship extinction by employer and that the dispute to have been initiated by employee himself. Despite restriction of this provision by lawmaker I consider that permitting revision in relation to employment relationship extinction disputes regardless of the value of dispute object is grounded. Bearing in mind socio-economic circumstances of our country, granting this legal remedy for submission to the Supreme Court it gives a greater security to persons who claim that their employment relationship rights have been violated and unfairly has come to termination of employment relationship.

Deadline for submission of revision is thirty (30) days from the day when the judgment was delivered to the parties.²⁶ It should be emphasized the fact that this deadline is definitive, legal and cannot be changed by the parties. Observing in terms of duration this deadline is relatively short. I think that the lawmaker has foreseen this duration due to the fact here we are dealing with appealing of court decisions which become final on the day of their issuance and due to the fact that starting from this day it may commence the execution of these decisions, because as abovementioned revision does not have suspensive effect, hence it is not an obstacle for execution of appealed judgment.²⁷ If this deadline would have greater duration then to the party who would eventually be accepted the submitted revision as fair and lawful and the Supreme Court would have amended the second instance court judgment, returning the benefit from the other party which has benefited from the execution of final judgment, would be more difficult.

If we make a comparison between the values of disputes over which revision is permissible there shall be differences between the LCP of Kosovo and other countries. Thus, in Austria revision is not permissible if the value of dispute is less than 5,000 €, in Switzerland 30,000 francs, while in the states of the former Yugoslavia – SFRY from 5 € to 15,000 €. ²⁸ By the Law on Contested Procedure of the Republic of Macedonia²⁹ are foreseen also other cases, when revision always is permissible, despite the value of dispute object. These are the following cases:
a) disputes for protection of copyright, except contentious claims on this basis;
b) disputes concerning the protection and use of technical discoveries and

²⁵ See more widely Iset Morina, Selim Nikçi, *Commentary of the Law on Contested Procedure*, Pristina, 2012, p. 400-401. See, Haxhi Gashi, Abdullah Ali, Adem Vokshi, *Commentary: Law No.2004/32 on the Family of Kosovo*, Pristina, 2012, p. 682. Also see articles 289-316 of Law no. 2004/32 on the Family of Kosovo.

²⁶ Article 211 paragraph 1 of the Law no. 03/L-006 on Kosovo Contest Procedure of 2008.

²⁷ Article 213 of the Law no. 03/L-006 on Kosovo Contested Procedure of 2018.

²⁸ Aleksandar, Jaksic, *op. cit.*, p. 633.

²⁹ Law No.124/2015 on Contested Procedure of the Republic of Macedonia by Amendments and Supplements, Official Gazette of the Republic of Macedonia, 124/2015.

advances, samples, patterns and stamps and the right to use the firm or the name, as well as disputes of unfair competition and monopolistic behavior, in addition to the contested claims on that basis; c) disputes in which proceedings according to appeal, the second instance court has changed the first instance court judgment; and d) revision exceptionally is permissible also against the second instance court judgment against which cannot be submitted the revision under paragraph 2 of Article 372,³⁰ if the second instance court in rendered judgment has permitted it. The second instance court may permit revision by concretizing the legal case to be brought before the Supreme Court of the Republic of Macedonia if it finds that the decision in contentious case depends on the resolution of any substantive legal matter or any procedural legal matter that is valid for ensuring the unified implementation of law and the unification of judicial practice. In reasoning of judgment, the second instance court, is obliged to emphasize for which legal case has permitted revision and to indicate decisions which reflect unequal application of law as well as to justify reasons for which assesses that this is valid for ensuring the unified implementation of law and the unification of judicial practice.³¹ In this case it is worth emphasizing that permitting revision by the second instance court judgment whenever it sees reasonable such a thing even in cases when by law revision is not permitted in property disputes of lower value of dispute object rather than the law provides, except in those cases when by this law or any other law is expressly foreseen that revision is not permissible.³² Here, the lawmaker grants authorizations to the second instance court when examines the case according to appeal, and if considers there is any case from substantive or procedural law that requires resolution for which the Supreme Court should express its opinion, permits revision in order for the Supreme Court to give a legal opinion about this matter on purpose, as stipulated by law, for unification of judicial practice and unique application of law. Moreover, the second instance court is obliged to make the concretization of a legal case for which it considers that the Supreme Court must express its opinion.

The latest amendments and supplements of the Law on Contested Procedure of the Federation of Bosnia and Herzegovina³³ clearly define the situations when revision can be submitted in comparison to the old law. Hence, according to the law in question, revision basically is not permitted in cases where the value of dispute object in the part of appealed judgment does not exceed the amount of 30,000 convertible marks, whereas in commercial disputes it does not exceed the amount of 50,000 convertible marks. However, the lawmaker here has foreseen two exclusionary provisions when revision is permitted despite the value of dispute

³⁰ According to this provision is implied that revision exceptionally is permissible even in cases when the value of dispute object in appealed part of judgment does not exceed the amount of 1,000 denars of Macedonia. Hence, by this provision, revision is permissible regardless of the value of dispute object.

³¹ Article 372 of the Law no. 124/2015 on Contested Procedure of the Republic of Macedonia.

³² Paragraph 5 of Article 372 of the Law on Contested Procedure of the Republic of Macedonia.

³³ Zakon o izmjenama i dopunama Zakona o parničnom postupku Federacije Bosnje i Hercegovine ("Sluzbene Novine FBiH" br. 98/15, od 23.12.2015).

object. In the first case, the Supreme Court of the Federation may exceptionally permit revision in all cases when it considers that decision on revision would be relevant to law enforcement in other cases. So, here we have a similar case of permitting revision just like in legislation of the Republic of Macedonia. The fundamental difference lies in the fact that here, the Supreme Court of the Federation decides about permitting revision and not the second instance court. And in the second case, when revision would not be permissible because the value of dispute object does not reach the amount determined above, the parties may submit revision against the second instance court judgment, if the decision on dispute depends from resolution of any important legal-substantive or legal-procedural case for ensuring unique application of law and equality of everyone during its enforcement and especially in cases when: *a) concerning a concrete case, the court of revision did not decide it yet, whereas we are dealing with the case where there is a different judicial practice of the second instance courts; b) concerning a concrete case the court of revision has already decided, whereas the second instance court decision is based in a point of view which is not in compliance by opinion of court of revision and c) regarding a concrete case the court of revision has already decided and the second instance court is based on that opinion*, however bearing in mind given reasoning in the first and second instance court proceedings (according to appeal) due to changes in legal system conditioned by new legislation or international agreements as well as decisions of the Constitutional Court of the Federation of Bosnia and Herzegovina and the European Court of Human Rights, the judicial practice should be reconsidered.³⁴

2.1.1. Impermissibility of revision

Revision is a limited legal remedy and due to this reason it cannot be submitted against all rendered judgments in the second instance court by the Court of Appeals. Limitation is made according to property value, causal, personal-cause and procedural criteria.³⁵ In addition to cases, respectively abovementioned disputes of low value where revision is not permissible, there are several cases when the law does not permit the submission of revision to contested procedure. These are the following cases:

- a) In special contested procedure in disputes against obstruction of possession, revision is not permissible against rendered rulings to this procedure;³⁶
- b) According to Article 88 of the Family Law, if marriage is resolved or annulled by a final judgment, the decision on divorce or annulment of marriage cannot be appealed by extraordinary legal remedies. Bearing in mind that revision is an extraordinary legal remedy, of course against this judgment it is not

³⁴ Zakon o izmjenama i dopunama Zakona o parničnom postupku Federacije Bosnje i Hercegovine ("Sluzbene Novine FBiH" nr. 98/15, od 23.12.2015). Article 49 amending and supplementing Article 237.

³⁵ Amra Hadzimustafic, cited paper, p. 1.

³⁶ See Article 481, paragraph 4, of the Law no. 03/L-006 on Kosovo Contest Procedure of 2008.

permissible. If eventually this legal remedy is submitted by the uninformed party, then the first instance court dismisses revision by ruling as impermissible. In cases, when the first instance court does not dismiss revision then the Supreme Court dismisses it by ruling;³⁷

c) Revision is not permissible against ruling concerning procedural expenditures;³⁸

d) Law no. 05/L-010 to the Kosovo Agency for Comparison and Verification of Property which annuls the Law no. 03/L-079, on Amending UNMIK Regulation no. 2006/50, for resolution of claims related to private immovable property, including agricultural and commercial property, as amended by Law no. 04/L-115 stipulates that decisions regarding the appeal rendered by the Supreme Court of Kosovo against decisions of the Property Claims Commission or the Commission for Verification and Placement for Property are final and cannot be appealed through regular or extraordinary legal remedies.³⁹ According to this law, decisions of Property Claims Commission or the Commission for Verification and Placement for Property may be subject of appeal before the Supreme Court of Kosovo, respectively to Appellate Panel as defined by the Law on Courts. However, against Appellate Panel decisions cannot be submitted extraordinary legal remedies.

e) Based on Article 10, paragraph 14 of the Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatization Agency Related Matters, all judgments and rulings of the Appellate Panel are final and cannot be subject to any other appeal. Thus, according to the jurisprudence of the Special Chamber of the Supreme Court, against rulings and judgments of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, the revision is inadmissible.⁴⁰ Rulings and judgments issued by the Appellate Panel cannot be subject to revision because they were not issued by the second instance court but by the Supreme Court itself.⁴¹

2.2. Causes for submission of revision

Revision as an extraordinary legal remedy against the second instance court judgment is a limited legal remedy and this is confirmed by the fact that it may be submitted only when exists one of the causes foreseen expressly by law which are of *numerus clausus* character⁴². It appears, the lawmaker goal is to limit to a certain extent the submission of this legal remedy⁴³ in order for the Supreme Court not to

³⁷ See articles 218 and 221 of LCP.

³⁸ Article 229, paragraph 3 of LCP.

³⁹ Article 15, paragraph 1 and Article 16, paragraph 6 of the Law no. 05/L-010 for the Kosovo Agency for Comparison and Verification of Property.

⁴⁰ Summary of Jurisprudence of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, published by Members of the Appellate Panel, Volume 1, 2016, p. 49. Source of Information: EULEX Kosovo, <http://www.eulex-kosovo.eu/?page=2,11,430>.

⁴¹ *Ibid.*, p. 49.

⁴² Iset Morina, Selim Nikçi, *Commentary of the Law on Contested Procedure*, Pristina, 2012, p. 403.

⁴³ *Ibid.* p. 403.

be charged by various requests of the parties which could have been addressed by appeal against the first instance court judgment or ruling but also to prevent abusing with this legal remedy. Hence, it results that revision is a very formal submission in which should be indicated exactly the causes stipulated by law for submission of this legal remedy, as a pre-condition in order to be examined by the Supreme Court.

Causes of revision have been stipulated by article 214 of LCP. Thus, revision may be submitted: *a) due to essential violation of contested procedure provisions referred to Article 182, paragraph 2 of this Law, by excluding violations provided in Article 182 paragraph 2 points (f, h, i and m);*

b) due to essential violation of contested procedure provisions referred to Article 182, paragraph 1 of this Law, which was conducted in proceedings of second instance court;

c) due to erroneous application of substantive law;

d) due to the overcome of lawsuit, if this violation has been committed in proceedings before the second instance court;

2. Revision cannot be submitted due to erroneous or incomplete determination of factual situation;

3. Against the judgment rendered by the second instance court by means of which the judgment is verified on the basis of claim, revision may be submitted only for causes from paragraph 1 point a), b) and d) of this article; and

4. Against the second instance court judgment by means of which is verified the first instance court judgment, revision cannot be submitted due to essential violations of contested procedure provisions from paragraph 1, point (a) of this article, unless their existence is not mentioned in the appeal, except when it comes to violations for which ex officio takes care the second instance court and the court of revision.⁴⁴

By analyzing the content of the LCP we note that revision basically may be submitted due to essential violations of contested procedure provisions and due to erroneous application of substantive law. The court commits essential (absolute) violations of contested procedure provisions if instead of conducting independent verification and evaluation of all decisive facts, including those for which the engagement of expert was necessary, only sends the content and quality of findings of expert (VS RCG, Pz-302/99).⁴⁵

Concerning essential violations of contested procedure provisions, although the law does not expressly define it, they may be essential violations of absolute importance and essential violations of relative importance.

Article 214, paragraph 1, point c) of the LCP, stipulates that revision may

⁴⁴ Law no. 04/L-118, on amending and supplementing the Law no. 03/L-006 on Contested Procedure. Also, regarding the causes for submitting a revision, see Agim, Nuhiu, Merita, Qato, *Civil-Contest Procedure*, Tetovo, 2016, p. 249-250.

⁴⁵ Zlatko Kulenovic, Stjepan Mikulic, Svjetlana Milisic-Velickovski, Jadranka Stanisic, Danka Vucina, *Komentari Zakona o Parnicom Postupku u Federaciji Bosne i Hercegovine i Republici Srpskoj*, Sarajevo, 2005 p. 416.

also be submitted due to erroneous application of substantive law. By erroneous application of substantive law is implied the failure of court to enforce the substantive law, implementation of a law that should not be enforced and improper interpretation of law that is in contradiction to its correct meaning or his general spirit.⁴⁶

There is erroneous application of substantive law also when the court did not apply any foreign law norm which should have applied or when such provision did not apply it properly, having in mind the fact that foreign law norm was obliged by law or international agreement to implement it.⁴⁷ Concerning this issue, the Supreme Court of Kosovo takes care even in those cases when the party did not specify it by revision, considering that based on article 215 of the LCP it is obliged to take care *ex officio* for proper application of substantive law.⁴⁸ In these cases, the court decision is unlawful although procedural provisions have been properly applied and factual situation is correctly established. Consequently, the Supreme Court shall approve revision and amend the appealed judgment regardless of whether we are dealing with dispositive or binding norms (*ius cogens*).⁴⁹ Regarding this cause, we should be careful if in particular cases we are dealing with erroneous implementation of substantive law or with erroneous or incomplete determination of factual situation. This distinction is important because, based on Article 214, paragraph 2 of the LCP, the lawmaker has prohibited the submission of revision due to erroneous or incomplete determination of factual situation.⁵⁰ It means in order for revision to be permissible, the party must prove that before the second instance court procedure have been committed violations of substantive law norms. The legal norm has been violated when the court has not applied it, or has erroneously applied it. Consequently, the Supreme Court reviews the legal aspect of the case rather than the factual one. The factual aspect of case has to do with the situation in a concrete case, the life event, on which the court applies the substantive law norm.⁵¹ Whereas, the legal aspect has to do with the norm or legal provision and is generalized. The legal aspect of case is also related to interpretation of contract, the testament or other declarations of will, or other matters concerning the meaning of a concrete act (of judgment, the ruling of an administrative body).⁵² The disagreement between conclusion concerning facts and legal conclusion, is a legal matter which directs to approval of revision and annulment of appealed decision in order to clarify important circumstances for proper application of substantive law.⁵³

⁴⁶ Faik, Brestovci, *Civil Procedure Law II*, Pristina, 2004, p. 83.

⁴⁷ Visoko sudsko i tuzilacko vijece Bosne i Hercegovine, Modul 4 – Gradjanska Oblast – Vanredni Pravni Ljekovi, Sarajevo, 2006, p. 28.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.* p. 27.

⁵⁰ Iset Morina, Selim Nikçi, *Commentary of the Law on Contested Procedure*, Prishtina, 2012, p. 404.

⁵¹ Faik, Brestovci, *Civil Procedural Law II*, Pristina, 2004, p. 97.

⁵² Borivoje Poznić, *Civil Procedure Law*, Pristina, 1981, p. 382-383.

⁵³ Ristic, D. Vukasin & Ristic, D. Milosin, *Praktikum za Parnicu, Savremena Administracija*, Beograd, 2000, fq. 220.

Revision as abovementioned, may be submitted also due to overcoming of indictment, if this violation has been committed before the second instance court procedure. It is well known the rule that in civil proceedings the court cannot decide for something else or more (*ne eat iudex ultra et extra petita partium*) than the plaintiff has requested by indictment. This is the case when the second instance court decides for something else in comparison to what the party has requested by appeal or when deciding more than the party's request. Therefore, whenever the second instance court violates this rule concerning indictment, revision shall be permissible under the law.

In paragraph 4 of Article 214 of the LCP, the lawmaker has determined the case when revision cannot be submitted due to essential violations of contested procedure provisions. This is related to situation when the second instance court by judgment verifies the first instance court judgment, except if existence of these violations is not mentioned to appeal and in addition to violations for which the second instance court and the Supreme Court takes care of *ex officio*. By this definition derive two exclusions, respectively when it comes to fulfillment of these two requirements revision of course is permissible. In relation to the first exclusion, the LCP in Article 215 determines which violations of contested procedure provisions the Supreme Court should take care of *ex officio*, and they have to do with the ability to be a party and regular representation. Also Article 194 of the LCP provides that the second instance court shall *ex officio* take care concerning violation of contested procedure provisions referred to in Article 182, paragraph 2, points b), g), j), k) and m).⁵⁴ Hence, the second instance court *ex officio* takes care of absolute essential violations of contested provisions, but not for all of them, only for those expressly provided by Article 194 of the LCP. When there are these violations, revision is permissible. Whereas concerning the second exclusion, I think there is some ambiguity, because according to the interpretation of paragraph 4 of Article 214, in order to permit revision in this case, essential violations of contested procedure provisions should not be mentioned in appeal. Thus, it is stipulated by Law No. 04/L-118, on amending and supplementing the Law no. 03/L-006 on Contested Procedure. Law no. 03/L-006, before it has been amended, has foreseen the contrary in paragraph 4 of Article 214 of Law 04/L-118, which states: "Except if their existence is not mentioned at all in appeal.". It implies that revision is not permissible against the second instance court judgment verifying the first instance court judgment, if these violations have not been mentioned to appeal. But concerning this matter, we should have one thing clear that here we are always discussing about essential violations of contested procedure provisions, for which the second instance court and the Supreme Court do not take care of *ex officio*, because on the contrary, as aforementioned revision should be permissible.⁵⁵ According to the logical interpretation of this sentence, I think this part of sentence before changing Article 214 has been more meaningful. Because only the party that mentioned the essential violations of contested procedure provisions in the first

⁵⁴ For more, see Article 182 of the Law no. 03/L-006 on Kosovo Contest Procedure of 2008.

⁵⁵ Iset Morina, Selim Nikçi, *Commentary of the Law on Contested Procedure*, Prishtina, 2012, p. 405.

instance court trial by appeal and the second instance court did not take them into consideration respectively rejected them by decision, is entitled to submit revision for the same causes. This due to the fact, violations of procedural provisions committed in the first instance court trial may also flaw the proceedings before the second instance court if this court has verified the first instance court judgment by violating the law. Logically, the appellant should mention all the flaws of appealed judgment which existed in the first instance court trial and were known to it. There is no reason for the appellant not to mention those flaws by appeal and to reserve them for later by submitting to revision, bearing in mind the fact that revision is a very limited legal remedy than appeal and its permissibility, respectively its admission by the Supreme Court of Kosovo is more uncertain.

3. Conclusion

Revision constitutes one of the extraordinary legal remedies of appealing the second instance court decisions or court of appeals which according to legal regulations of contested procedure has become final and executed - enforceable. This legal remedy may be submitted by litigants against the second instance court judgment, under requirements provided by law. The parties may submit revision against judgment within a 30-day legal deadline and as the competent court to decide on revision submitted by the parties against the second instance court judgment is the Supreme Court. Revision submitted against the second instance court judgment does not cause a suspensive effect, and as such the final judgment may become enforceable.

Revision as one of the extraordinary legal remedies of appealing decisions in contested civil procedure is not permissible in property disputes in which indictment relates to cash claims, by delivery of a thing, fulfillment of any other promise if the value of dispute object in appealed part of second instance court judgment does not exceed 3.000 €. Even in property disputes, in which indictment is not related to cash claims, by delivery of a thing, fulfillment of any other promise if the value of dispute object indicated to indictment of plaintiff, does not exceed the amount of 3.000 €. revision is not permissible. Whereas in commercial disputes, revision is not permitted if the value of dispute object in the appealed part of second instance court judgment does not exceed the amount of 10.000 €. In this scientific paper has been emphasized the fact that based on comparison made between the LCP of Kosovo and laws of various other countries, it can be noted that there is a difference in terms of the amount or value of dispute that should exist, in order for revision to be permissible. Hence, it is an internal matter of states, how to regulate or determine by law the value of dispute object in appealed part of final judgment in order for revision to be permissible.

Through legal provisions of the LCP of Kosovo respectively Article 211 paragraph 4 provides in a taxable manner that revision against the second instance court judgment is always permissible regardless of the value of dispute object in cases when it comes to disputes about alimony, in disputes about lost food due to

the death of food provider, in labor disputes against the decision to terminate the employment relationship. So there are cases where the value of the dispute object does not appear as an obstacle in order for revision to be permissible as an extraordinary legal remedy of appealing the second instance court judgment.

Revision cannot be submitted against all second instance court judgments, which implies that if there is no fulfillment of legal requirements, then revision is not permissible and as cases when revision is not permissible as an extraordinary legal remedy have been mentioned property claims below the amount of dispute object stipulated by law, therefore it does not exceed 3.000 €, in appealed part of judgment or the value indicated by indictment. Likewise, revision is not permissible due to obstruction of possession, against judgment by means of which the marriage is resolved or annulled by final decision, against the ruling on procedural expenditures etc.

By legal provision is foreseen that revision may be submitted due to essential violations of contested procedure provisions as stipulated by law, due to erroneous application of substantive law and due to overcoming of indictment by the second instance court. But in this scientific paper is made clear that based on the law the parties cannot submit revision against judgment due to erroneous or incomplete determination of factual situation.

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