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REVISION PERMISSIBILITY IN CIVIL PROCEDURE IN REPUBLIC OF MACEDONIA

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Abstract:

The revision as an extraordinary legal remedy is one more legal instrument for litigant in the effort to achieve protection of the rights or to defend against ungrounded claims of the other party.

Litigants may declare revision of the litigation process due to substantive violations of the provisions of Civil Procedure and incorrect application of substantive law. Declaring revision because of a substantive violation of the provisions of Civil Procedure is limited.

The purpose of this research paper is to investigate the most common reasons for filing revision of the litigation process in the period from June 2011 to June in 2012. The research includes what kind of reasons are often repeated, and the volume, or the number of reviews submitted to the Supreme Court of the Republic of Macedonia.

As general hypothesis is that most of the adopted revisions are due to substantial violations of the provisions of civil procedure.

Two-thirds of the stated revisions in front of the Supreme Court of Republic of Macedonia were rejected as unfounded and only one third of the submitted revisions from June 2011 to June 2012 were grounded. Since accepted revisions 59% due to incorrect application of substantive law, and 41% due to substantial violations of the provisions of Civil Procedure.

Key words: Verdict, an extraordinary legal remedy, the Court, and parties.

1. Introduction

Legal remedies are litigation actions of the parties that disapprove a court decision as defective and proposed the decision to be modified or abolish and adopt another decision that will be more favorable to the complainant.

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The legal remedies in the theory of civil proceedings are divided into regular and irregular, but there is not a reliable criterion by which this division could be implemented in all process systems¹⁴⁵.

Revision as an extraordinary remedy is a third instance would also ensure regularity and legality in trial and permanent unity of the legal system with a single application of the laws of their whole area of validity.

Revisions can be submitted due to essential infringement of civil procedure and the incorrect application of substantive law. The revision cannot be submitted against effective verdict because of incorrect and incomplete facts¹⁴⁶.

2.Revision Permissibility in Litigation Process

The term "revision" etymologically derives from the Latin word "revidere" which translated means "to investigate" to "review" and new Latin "revisio", which means "re-examined" or "to look again "or "once again see" for examination and judgment.¹⁴⁷

In the Republic of Macedonia applicable was the Law on Civil Procedure "Official Gazette of SFRY " No. 4/77, 36/77, 36/80, 69/82, 58/84, 57/89, 20/90 and 35/91, and after the independence of the Republic of Macedonia in 1991 this law in accordance to Article 5 of the Law on Implementation of the Constitution of the Republic of Macedonia¹⁴⁸ the republican law is applied. First Law on Civil Procedure of the independent Republic of Macedonia was adopted and published in the "Official Gazette of the Republic Macedonia " No.33 / 98 of 11/07/1998. In our Law on Litigation, the revision is an extraordinary remedy used by the parties in order to provide material legal and procedural and legal legitimacy of judicial decisions. Nevertheless, the revision is achieved by wider legal and political goals. Revision against verdict is an extraordinary remedy which is declared against final judgment second instance. The revision does not allow avoiding the appeal. However it is not required to file appeal by the party that declares revision. Upon the stated revision competent is the Supreme Court of the Republic of Macedonia and the remedy does not delay the execution of the final verdict against which the revision is submitted. The revision is preclusive remedy because it is submitted within thirty days after receipt of the copy of the verdict, after expiration of this term you cannot submit revision. The revision is two-side remedy, because a copy of the revision is delivered to both parties. Finally, the application of the revision is limited regarding the reasons for which can be stated and regarding the possibility when can be stated.

¹⁴⁵ Poznič B. *Građansko procesno pravo*, Savremena administracija, Beograd, 1982.

¹⁴⁶ Kamhi S. *Građanski sudski postupak*, Veselin Masleša, Sarajevo, 1961.

¹⁴⁷ <http://mk.wikipedia.org/>

¹⁴⁸ „Службен весник на РМ“ бр.52/91.

3. Admissibility of Review Under the Civil Procedure

A revision upon effective verdict reached in second instance, the parties can declare within 30 days of submission of a judgment transcript.

The basic rule regarding the admissibility of the revision is that the parties can declare a revision, only if the effective verdict is adopted in second instance. There is a double limitation for filing a revision: 1) regarding the value of the dispute, and 2) regarding the type of the dispute¹⁴⁹.

1) Regarding the value of dispute - *ratione valoris*, revision is allowed in cases where the value of the dispute of the objected part of the effective verdict exceeds 1.000.000 denars. As the value of the dispute is taken the value of the main claim, interest, trial costs, contractual interests and other additional claims are not taken in consideration if they are not in the main claim¹⁵⁰.

2) Regarding the type of dispute - *ratione causae*, i.e. regardless the value of objected part of the effective verdict, the revision is always allowed: 1) in disputes over alimony, or disputes taken to support the contract for life support and other agreements; 2) disputes about compensation for lost support because of the death of the care provider; 3) in the labor dispute to for termination of employment; 4) disputes over the copyright, except for cash claims on that basis; 5) in disputes relating to the protection and use of inventions and technical improvements, samples, models, and seals and the right to use the name or firm and disputes of unfair competition and monopolistic behaviors, except for cash claims on those grounds.¹⁵¹

The news in our litigation legislation that was introduced in 2010 by Law on modification and amendment of the Law on litigation procedure (LMALLP), Published in the „Official Gazette of the Republic Macedonia“ No.116 of 01/09/2010, is that the revision is always allowed in disputes where in the procedure upon appeal the second instance court modifies the first instance verdict. If the appellate court has already modified the first instance verdict and returned the case to trial again and because of this verdict the parties submit appeal and the second instance court found that there are some essential violations of the provisions of Civil Procedure, misleading or incomplete factual condition, then the appellate court shall schedule a hearing and reach a decision, at that hearing the court may establish different facts than that determined by the lower court and then modify the first instance verdict. Given that the second-instance court on the hearing derives evidences that primary court has already derived and the second-instance court establish different factual condition other than the

¹⁴⁹ Bazala B. *Zakon o parničnom postupku s objašnjenjima i sudskim odlukama*, Novinsko-izdavački, štamparski i birotehnički zavod, Zagreb, 1969.

¹⁵⁰ Чавдар К., Чавдар К. *Закон за парничната постапка со коментари, судска практика, обрасци за практична примена и предметен регистар*, Академик, Скопје, 2011.

¹⁵¹ Јаневски А., Зороска-Камиловска Т. *Граѓанско процесно право, книга прва-парнично право*, Правен факултет „Јустинијан Први“, Скопје, 2012, 468.

primary court established it is necessary a revision to be submitted against this verdict. This way allows a two-instance of the procedure, which controls the effectiveness of this verdict adopted by the second instance court that actually has is first instance meaning¹⁵².

Nevertheless, the revision is allowed against second-instance verdict, against which revision cannot be submitted due to causal criteria stated above under item 2, if the appellate court allowed this. The appellate court may approve this revision if it is specified the scope of the legal issue that would rise before the Supreme Court of the Republic of Macedonia, if decides that a decision on the dispute depends on solving material legal or procedural and legal issues important to provide sole law enforcement and judicial practice of equalization. This is the so-called extraordinary revision.

In disputes of small value there is no revision allowed, the revision is not allowed in the proceedings for annulment and divorce.

In commercial disputes against effective verdict adopted in second instance, a revision is allowed, if the value of the dispute of the effective verdict is over 1.500.000 denars.¹⁵³

The revision is not allowed against a decision of the appellate court for rejection of complaint in litigation for disturbance of possession.

The party that has not submitted appeal against the verdict of the first instance court, has no right of revision against effective court verdict with which the appellate court, proceeding upon the appeal of the opposite party, rejects this appeal and confirm the verdict of the first instance court.

The legal nature of the dispute of which depends the admissibility of the revision, court establishes taking into consideration all factual disputes.

4. Exceptional Revision

Exceptional revision is an exceptional legal remedy whose submission is allowed as an exception, to exercise certain rights and political goals. Exceptional revision is in order to provide equalization of court practice and uniform application of law regarding certain legal issues. This so-called exceptional revision first appeared in the LLP since 2005, where in Article 372 paragraph 4 revision by exception is permitted against second instance verdicts, against which you cannot submit revision according the value criteria, if the appellate court allowed this. The second instance court may also decide, if it considers that a decision on the dispute depends on solving material legal or procedural and legal issues important to ensuring uniform application of the law and the harmonization of judicial practice. In the explanation of the verdict, the appellate court is obliged to specify for which

¹⁵² Чавдар К., Чавдар К. *Закон за парничната постапка со коментари, судска практика, обрасци за практична примена и предметен регистар*, Академик, Скопје, 2011.

¹⁵³ Јаневски А., Зороска-Камиловска Т. *Граѓанско процесно право, книга прва-парнично право*, Правен факултет „Јустинијан Први“, Скопје 2012, 469.

legal question the revision is allowed and state the reasons why it considers that this is essential to ensure uniform application of the law and the harmonization of judicial practice¹⁵⁴.

5. Reasons for Revision

In our law in Article 375 paragraph 1 of the same law it is prescribed that a revision can be submitted only for substantive violations of the provisions of the civil procedure and the incorrect application of substantive law. The revision cannot dispute effective verdict because incorrect and incomplete facts.

Since the revision cannot be submitted due to incorrect established facts, the parties may in the revision to state new facts and new evidence only if related to essential violations of the provisions of Civil Procedure because that may be filed revision¹⁵⁵.

The submission of the revision is limited due to the substantive violations of the provisions of Civil Procedure. The revision can be submitted for the following absolute essential violations of the provisions of Civil Procedure, incurred before first instance or appellate court: irregularly composition of the court, participation of judge or juror who should have been excluded, court jurisdiction, subject matter jurisdiction, forbidden disposal of the parties, forbidden adoption of verdicts, breach of the principle of hearing the other side, a violation of the right to use own language, the ability to be a party, disorder in representation, breach of the principle of *res judicata*, having deficiencies in judgment for which it cannot be examined.

Due to the relatively substantial violation of the provisions of Civil Procedure, revision can be submitted only if the violation is committed in proceedings before the appellate court. An example of such injuries: if the appellate court has new evidence brought out at the hearing, if overstepped the limits of examination of the second instance verdict, if improperly dismissed the appeal, modify the judgment on the damage to the party only complain, if in the second instance verdict there is no appraisal of the appeal complaints which are significant¹⁵⁶.

For exceeding the claim, revision cannot be submitted when the injury was done before the first instance court and the appellate court does not remove the injury, although the party complained. Due to this injury, revision may be submitted only if such exceeding is done in the proceedings before the appellate court, for example by modifying the judgment awarded the plaintiff thing this has not requested or rejected any claim that the procedure has not been set, or had been withdrawn, etc.

¹⁵⁴ Чавдар К., Чавдар К. *Закон за парничната постапка со коментари, судска практика, обрасци за практична примена и предметен регистар*, Академик, Скопје, 2011.

¹⁵⁵ Георгиевски С. *Граѓанско процесно право*, Култура, Скопје, 1984, 352.

¹⁵⁶ Poznić B. *Gradansko procesno pravo*, Savremena administracija, Beograd, 1982.

Against the second instance verdict which confirms the first instance verdict, revision can be submitted for some substantive violations of the provisions of Civil Procedure only if the revision referred to these injuries in the appeal against the first instance judgment, or if they have committed violations in the second instance proceedings. It is essential for subsequent violations of the provisions of Civil Procedure: If the violation relates to the local jurisdiction, if contrary to the provisions of the Civil Procedure court decided because of absence, judgment for failing to answer the complaint, judgment without holding a hearing, judgment on the basis of recognition, judgment based on waiver, if the party to unlawful treatment, especially with the lack of service is given the opportunity to debate in court, if violated provisions of the Civil Procedure relating to the right of the party to her an interpreter in the proceedings, if the court decided without the main hearing, and was obliged to hold a major debate and against the law if the public was excluded from the main hearing¹⁵⁷.

The revision may be submitted because of incorrect application of substantive law, i.e. when the first instance or appellate court, or both, did not apply the provisions of substantive law that should apply or where such provision is not applied properly. This injury appellate court can do when confirming the first instance judgment, or when he overturned the first instance judgment incorrectly applying the substantive law.

Exceptional revision can be lodged for material legal or procedural legal issues for which it is permitted and which the appellate court stated in the explanation of the verdict.

6. Purpose of Research

Aim of the study which is done in this paper is to investigate the most common reasons for filing the revision practice and the kind of reasons that are commonly repeated, and volume, or the number of reviews submitted from June 2011 to June 2012.

The treatment of the subject of research as a general hypothesis in this paper is taken as follows: Most of the adopted revisions primarily due to substantive violations of the provisions of the civil litigation.

7. Results Analysis of Revisions Published on the Website of the Supreme Court of Macedonia

The table presents data from a survey which was carried out analysis of 450 lodged revisions, which are published on the website of the Supreme Court of

¹⁵⁷ Јаневски А., Зороска-Камиловска Т. *Граѓанско процесно право, книга прва-парнично право*, Правен факултет „Јустинијан Први“, Скопје 2012,470

the Republic of Macedonia in the period from June 2011 to June 2012 and after the analysis, showed the following:

The analyzed 450 reviews that are posted on the website of the Supreme Court of the Republic of Macedonia from June 2011 to June 2012, come to the realization that being rejected as unfounded 320 revisions, 22 revisions were rejected 18 of which as illegal, and 4 as untimely. From 112 adopted revisions, 46 revisions have been adopted due to substantive violations of the provisions of Civil Procedure and 45 revisions were adopted due to substantive violations of the provisions of the civil procedure provided for in Article 343 paragraph 2 item 13 of Civil Procedure, specifically when judgment has deficiencies which can be examined, the judgment for reasons not relevant findings, rejected that part of the judgment is vague and incomprehensible and cannot examine and revision 1 is adopted for substantive violation of the provisions of Civil Procedure Article 343 paragraph (1) of the Civil Procedure Law, which was committed in proceedings before the appellate court when the court during the procedure is not applied or incorrectly applied any provision of the same law, which affect or may affect the adoption of laws and proper judgment. Of the 112 revisions adopted, 66 were adopted by incorrect application of substantive law.

On both grounds, due to essential violations of the provisions of Civil Procedure and incorrect application of substantive law, were adopted four revisions. The most of the revisions are adopted by incorrect application of substantive law and thus our hypothesis is not confirmed in full. The reason for the incorrect application of substantive law by the lower courts is that the lower courts incorrectly applied the legal standard in deciding the specific civil legal relationship, or a dispute, both in terms of disputes pertaining to the actual legal claims the binding legal requirements and the statutory disputes. Lower courts specific civil legal relationship applied under another legal norm and thus incorrectly applied the substantive law.

Table 1. Published decisions on the Supreme Court of Republic of Macedonia's website from June 2011 to June 2012, deciding upon asserted revisions.

Rejected revisions	Disposed revisions		Approved revisions		
	unfounded	illicit	untimely	Due to substantial violations of the provisions of Civil Procedure	Due to incorrect application of substantive law
320	17	4	46	66	4

Conclusion

Besides the appeal as a regular remedy, the law provides two exceptional remedies: revision and retrial as a legal basis and mechanisms to protect human rights.

The revision is an exceptional remedy which the party can submit for effective verdict adopted in second degree. The deadline for filing the revision is 30 days within the date of receiving the copy of the judgment. Revisions can be said for a substantive violation of the provisions of the civil procedure and the incorrect application of substantive law. The revision shall be submitted to the court which decided the matter in the first instance, and further by the appellate court shall submit the revision with all records of the case to the Supreme Court of the Republic of Macedonia for meritorious decision. Admissibility review, the conditions under which a review is requested, and the actions of the competent authorities for review and the decisions they can make, are regulated by the Law on Civil Procedure. Stated revision does not suspend the execution of the final judgment.

Two- thirds of the stated law before the Supreme Court of the Republic of Macedonia was rejected as unfounded and only one third of the submitted revisions established from June 2011 to June 2012. Due to incorrect application of substantive law are 59 % of the established revisions because the lower courts applied the wrong legal standard in deciding the specific civil legal relationship. Lower courts specific civil legal relationship applied under another legal norm and thus incorrectly applied the substantive law. Since established revisions 41 % due to substantial violations of the provisions of the civil procedure provided for in Article 343 paragraph 2 item 13 of Civil Procedure, specifically when judgment has deficiencies which can be examined, the judgment for reasons not relevant findings when the contested judgment is vague and incomprehensible. Most of the revisions are adopted by incorrect application of substantive law. The lower courts in their work should pay more attention to the proper application of substantive law and deciding to watch out for those legal norms will apply for specific civil legal relationship and whether it is the norm that corresponds to that civil legal relationship. When the applicant in the appeal shall be called the incorrect application of substantive law, the appellate court should thoroughly review the matter and determine whether the lower courts correctly applied the substantive law.

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DOPUŠTENOST REVIZIJE U PARNIČNOM POSTUPKI U REPUBLIKE MAKEDONIJE

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Apsrakt:

Revizija može da se izjavi zbog bitne povrede odredaba parničnog postupka i pogrešne primene materijalnog prava. Izjavljivanje revizije zbog bitne povrede odredaba parničnog postupka je ograničeno.

Cilj istrazivanja ovog truda je da se istraže najčešće razloge za izjavljivanje revizije u praksi i koji razlog najčešće se ponavlja u praksi, kao i broj podnete revizije do Vrhovnog suda Republike Makedonije u periodu od juna 2011 godine do juna 2012 god.

Pri obrada predmeta istrazivanja kao generalna hipoteza je uzeta da najveći deo od usvojene revizije je zbog bitne povrede odredaba parničnog postupka. Nakon istrazivanja ova hipoteza se nije potvrdila.

Dve tretine od izjavene revizije do Vrhovnog suda Republike Makedonije su odbijene kao neosnovane, a samo jedna tretina od podnete revizije u periodu od od juna 2011 godine do juna 2012 godine su osnovane. Od osnovanih revizije 59% su zbog pogrešne primene materijalnog prava, a 41% je zbog bitne povrede odredaba parničnog postupka.

Niži sudovi pri svoj rad treba da obrate veću pažnju na pravilnu primenu materijalnog prava i pri odlučivanja da paze koja pravna norma će primeniti na konkretnog građanskog-pravnog odnosa i dali je to pravna norma koja odgovara tom građanskom-pravnom odnosu.

Ključne reči: Presuda, vanredni pravni lek, sud stranke.