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Procedures Related to the Appeal of the First Instance Court Decision in Georgian Civil Law

[Procedury związane z odwołaniem od decyzji sądu pierwszej instancji w gruzińskim prawie cywilnym]

Abstrakt

Jak wiadomo, sądy apelacyjne są częścią systemu sądownictwa w niemal każdym kraju – w związku z czym strony (w tym korporacje) mogą wnieść apelację w celu ponownego rozpatrzenia orzeczenia sądu pierwszej instancji. W ten sposób strona przegrywająca ma szansę na weryfikację decyzji sądu pierwszej instancji przez sądy apelacyjne – w celu ustalenia, czy sąd pierwszej instancji prawidłowo zastosował prawo, czy też nie. Rola Sądu Apelacyjnego w Gruzji znacznie wzrosła po nowelizacji gruzińskiego kodeksu postępowania cywilnego z 28 grudnia 2007 r. W wyniku tych zmian skomplikowały się przesłanki dopuszczalności skargi kasacyjnej, a jednocześnie wzrosła rola i znaczenie sądu apelacyjnego. Zgodnie z wprowadzonymi zmianami – w większości spraw Sąd Apelacyjny stał się sądem ostatecznej instancji. Wszystko to nałożyło jeszcze większą odpowiedzialność na Sąd Apelacyjny. Gruzja ma niekompletny (ograniczony) model apelacji. Oznacza to, że zasadność apelacji jest sprawdzana na podstawie okoliczności faktycznych oraz dowodów przedstawionych i zbadanych przez sąd pierwszej instancji. Jeśli chodzi o nowe fakty i dowody, ich przedłożenie sądowi apelacyjnemu jest dozwolone tylko w przypadkach przewidzianych przez prawo. W wyniku przeprowadzonych zmian zakres uprawnień i obowiązków Sądu Apelacyjnego został jeszcze bardziej rozbudowany.

Słowa kluczowe: sąd apelacyjny, dopuszczalność apelacji, prawo cywilne.

Introduction

A prerequisite for legal order and security is the effectiveness of the justice system and effectiveness of justice implies independent, impartial and fair

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proceedings.¹ It is possible to develop legal norms in such a way that the judge is given the right to fill in the gaps that the legislator has not yet resolved and the Court of Appeal has the most significant role in this process.² Appeal, as one of the most important part of the judicial system, exists in almost all countries³. Protection of procedural rights and guarantees must be ensured for the persons involved in the judicial process.⁴

Justice in Georgia is administered on the basis of the principles of competition and protection of equality. Everyone has the right to go to court to protect their rights which is recognized by the principles of international law. The guaranteed right to go to court implies not only that any person has the right to go to court to protect his right, but also the obligation of the court to discuss any case fairly.⁵ Review of the case in the appellate manner means that the appellate court will review the case again and substantially. Appellate courts review court decisions, not trials. It checks how correctly the court of first instance applied the legal norm.⁶

In Georgia Appeal procedures in the Court of Appeal are regulated by the Civil Procedure Code of Georgia. Every person has the right to be protected by the court. The court will start consideration of the case with the statement of the person who applies to it to protect his rights or interests stipulated by the law. In civil proceedings, the decision issued by the court of first instance can be appealed by the parties or third parties with an independent claim. First of all, the court of Appeal checks whether the claim is admissible or not. The civil procedure legislation provides for the certain prerequisites for the admissibility of an appeal, in the presence of which the appeal can be accepted.⁷

The Prerequisites for the Admissibility of an Appeal

The appellations exist in almost all countries, which are characterized by both similar and different features. These differences are due to the fact that there are two types of appeals. These are complete and incomplete appeal.⁸ Incomplete appeal is typical for the Georgian court system in which the mer-

¹ S. Schmidt, H. Richter, *The Process of Decision-Making by a Judge in Civil Law*, German Society for International Cooperation (GIZ), 2013, p. 3.

² S. Kipshidze, *Judicial Law as a Source of Law*, "Journal of Law" 2018, N1, Tbilisi, p. 205.

³ T. Liluashvili, *Civil Procedural Law*, 2nd ed., Tbilisi, 2005, p. 334.

⁴ I. Merebashvili, *Organization of Judicial Structures and Effective Administration of Justice in Civil Cases*, Journ. Justice and Law 2010, N1 (24), Tbilisi, p. 96.

⁵ S. Kurdadze, N. Khunashvili., *Civil Procedure Law of Georgia*, Tbilisi 2012, pp. 649–651.

⁶ G. Lashkhia, *Peculiarities of Appealing a Decision in a Civil Case and Proceedings*, Master thesis, Tbilisi 2019, pp. 3–5.

⁷ G. Kiria, *Theoretical-Practical Commentaries of Court Decisions According to the Civil Procedure Code of Georgia*, Tbilisi 2002, pp. 73–75.

⁸ T. Liluashvili, *Appeal in the Civil Process: Practical guide*, Tbilisi 2005, p. 458.

its of the appeal is examined according to the factual circumstances and the evidence which was presented to the first instance court and which was examined and evaluated by this court.⁹ In the case of an incomplete appeal, the submission of new facts and evidence is admissible in the appeal proceedings.¹⁰

Decisions of the city (district) court, which have not yet entered into legal force, may be appealed in the Court of Appeal. Similarly, according to § 511 of the German Civil Code, final decisions of the court of first instance are subject to appeal.¹¹ The parties, third parties with an independent claim, co-participants within the limits of their rights determined by their participation, and priors who do not appear in the case as parties but whose rights and duties have been determined by a court decision have the right to appeal.¹² It is important to research the prerequisites for the admissibility of civil cases in the courts of appeal and the highest instance, because when the party does not get the desired result in the court of first instance, it tries to fill this gap by appealing to the court of appeal.¹³

First of all, what the appellate court does in the case of an appeal against the decision of the first instance is to check the admissibility of the appeal. The appellate court indicates in many of its decisions that if the appellate complaint meets the prerequisites for admissibility, then the case is no longer returned to the court of first instance and the appellate court itself makes decisions on the said case.¹⁴ The Civil Procedure Legislation of Georgia provides for the prerequisites for the admissibility of an appeal, in case of satisfaction of which the Court of Appeal is entitled to accept the appeal in the proceedings. This article examines these prerequisites in detail.

Term

First of all, it is important whether the 14-day deadline for filing an appeal is respected. As it is mentioned, the term for filing an appeal is 14 days.¹⁵ The extension and recovery of this period is not allowed and it starts from the moment of delivery of the reasoned decision to the party. The moment of transfer of the decision is considered to be the handing over of the copy of the reasoned

⁹ T. Todria, Importance of Factual Circumstances in the Court of Cassation: Dissertation thesis submitted for the academic degree of Doctor of Laws, Tbilisi 2010, p. 21.

¹⁰ Civil Procedure Code of Georgia, Art. 380.

¹¹ I. Merebashvili, Organization..., p. 97.

¹² T. Liluashvili, Civil..., pp. 336-339.

¹³ I. Merebashvili, Organization..., *ibid.*

¹⁴ Decision of the Civil Affairs Chamber of the Court of Appeal of Georgia of January 24, 2020 № 2b/2604-19; Decision of the Civil Affairs Chamber of the Court of Appeal of Georgia of January 17, 2020, №2b/5969-19; Decision of the Civil Affairs Chamber of the Court of Appeal of Georgia of February 21, 2020, №2b/3477-18.

¹⁵ Civil Procedure Code of Georgia, Art. 369.

decision to the party. If a person with the right to file an appeal is present at the announcement of a reasoned decision, the term for filing an appeal starts from the moment of its announcement.¹⁶

The moment of delivery of the decision should be considered when the party is given a certified copy of the decision in his hand in court, which he must confirm with his signature on the document of the decision, or the time of sending it to the party. The time when the copy of the decision was delivered to the post office or courier in accordance with the procedure established by the procedural legislation of Georgia should be considered as the time of forwarding, which is indicated on the envelope in which the copy of the decision is placed. There must be a notice in the case that according to this rule. A copy of the sent decision was handed over to the addressee.

It should be noted that when the claim is not complete, the court sets an appropriate deadline for filling the gap, which is counted from the date of delivery of the judgment to the party.

After accepting the claim in the proceedings, the court sends a copy of the claim to the defendant and sets an appropriate deadline for submission of the counterclaim, and after the submission of the counterclaim, its copy is sent to the plaintiff.

The Jurisdiction of the Court of Appeal

In some categories of cases, it is obvious that the case is the subject of judicial review but in some disputes the claimant is obliged to prove that the case is under the jurisdiction of the Court of Appeal. This kind of proof is different from the justification of the claim or counterclaim. If the claimant, while substantiating his right, presents the facts and evidence in detail in the description and motivational part of the claim, the issue of departmental subordination or apprehension does not require such detailed argumentation. But it should be clear from the statement of claim that this dispute is under the jurisdiction of the court and is not within the competence of another body. For this, it is enough to clearly define the nature of the disputed legal relationship and the subjective composition of this relationship.

The judge is obliged to refuse to accept the statement of claim, if it is not under the jurisdiction of the court. In order for the court to accept the application, the case must be under the jurisdiction of the court. Within 10 days the court of appeal check whether the appeal is admissible or not.¹⁷ If, as a result

¹⁶ T. Liluashvili, V. Khrustali, Commentary on the Civil Procedure Code of Georgia, Tbilisi 2007, p. 632.

¹⁷ Civil Procedure Code of Georgia, Art. 374; Judgment of the Court of Appeal of March 23, 2015, №28/1041-15; Decision of the Civil Affairs Chamber of the Court of Appeal of Georgia of March 10, 2010, #3b/2740-10.

of the examination, it is found that the appeal is admissible, the court issues a ruling on accepting the appeal for consideration.¹⁸

It should be clear from the statement of claim that this dispute is subject court and is not within the competence of another body. For this, it is enough to clearly define the nature of the disputed legal relationship and the subjective composition of this relationship. For example, the plaintiff filed a lawsuit about compensation for the damage caused to him, but at that time he did not file a claim about compensation for moral damage. After that when the plaintiff file a new claim about moral damage it is enough that he/she refer to previous court decision and it is clear for the judge that there is no reason to refuse to accept the claim. Therefore, courts can only decide those cases that belong to their jurisdiction by law. In this way, the party that has correctly defined the departmental subordination to the dispute court protects himself or herself from the delay of the court process.¹⁹

The Content of the Appeal

It is important whether the content of the appeal meets the requirements of the law. The courts of Appeal should pay special attention to the content of the appeal²⁰. The Court of Appeal reviews the decision on appeal from a factual and legal point of view. The Court of Appeal draws attention to the fact that whether the defendant has presented a qualified defense to the claim. In particular, if the response submitted by the defendant does not contain references to the opposite circumstances of the factual circumstances stated in the claim, and no relevant evidence is presented. Such a response will be treated as a non-response, if the defendant did not indicate the counter arguments of the claim at the preparatory session, If the arguments and proofs presented by the defendant's representative at the main session were not accepted by the court on the grounds that the party failed to prove the existence of honorable circumstances of their absence before the main session (preparatory session). It is important why according the appellant believe that the decision is unfair, what he/she requires, the circumstances that support the appeal and the evidence that supports these circumstances are also significant. The appellant must indicate the circumstances that justify his/her position and provide the proofs that will confirm the stated circumstances. The appellate court considers the location of the property, the date of its registration as the factual circumstances which are undoubtedly established.²¹

¹⁸ Judgment of the Court of Appeal of March 27, 2015, №26/1114-15.

¹⁹ T. Liluashvili, Civil Procedural Law, 2nd ed., Tbilisi 2005, p. 336.

²⁰ Civil Procedure Code of Georgia, Art. 368.

²¹ Decision of the Civil Affairs Chamber of the Court of Appeal of Georgia of April 24, 2019, №26/281-19.

If the appeal does not meet the requirements stipulated by the law, the court must instruct the appellant to fill in the gap, for which it will set a deadline, if the gap is not filled within this period, the appeal will no longer be accepted and the court will leave the appeal unconsidered. For example, the Court of Appeals in one of the cases considered that the proven factual circumstances legally justify the claim. In addition, there are no circumstances preventing the decision to be made *in absentia*. That is why a decision on the satisfaction of the claim should be made.²²

In addition to, the precedent law of the European Court of Human Rights establishes that the principle of equality of the parties, which is one of the elements of the broad concept of a fair trial, requires each party to have a reasonable opportunity to present its case under conditions that do not put it at a significant disadvantage in relation to its opponent.

Cost of Appeal

It is important to clarify whether the value of the appeal corresponds to the amount provided by law. An appeal is admissible only if its value exceeds 2 000 GEL²³. This refers only to property legal disputes, as for non-property disputes, any decision can be appealed, regardless of how much the value of the subject of the non-property dispute was determined.

The cost of an appeal is determined by the extent to which the party wants to change the appealed decision. For example, „B” against whom it was brought the decision and by which he was ordered to pay 2000 GEL, appealed the decision only partially, namely in the part by which he was ordered to pay 700 GEL in favor of the plaintiff. In this case, the price of the appeal is 700 GEL (not 2000 GEL).²⁴

The Legal Power of Appeal

It is important whether the representative submitting the complaint has the authority to appeal the decision by the way of appeal. The person filing the appeal may be a party's representative, but that is not enough. He must have the right granted and this must be specifically mentioned in the power of attorney.

²² Decision of the Civil Affairs Chamber of the Court of Appeal of Georgia of March, 10, 2020, №2b/9213-19.

²³ Civil Procedure Code of Georgia, Art. 365.

²⁴ T. Liluashvili, Civil..., p. 337.

State Fee

The state fee is paid by the party in advance, therefore, if it has not been paid by the appellant²⁵, then the appellate court sets a deadline for the appellant to fill the gap and pay the duty. If the fee is not paid, the Court of Appeal won't consider the appeal. It should be noted that the civil procedure legislation of Georgia provides for the postponement of the payment of court costs or the reduction of their amount. The parties participating in the process have the right to apply to the court for postponement of the payment of court costs and reduction of their amount. Applications can be submitted at any stage of the process. The application must indicate the circumstances that confirm the validity of the request and provide certain evidence.

In Georgia, the law sets quite high rates of state fee. The main reason of this is to prevent unfounded lawsuits. However, it should be noted that there are special benefits for those people who, due to their financial situation, cannot afford to pay the state duty. The procedural legislation of Georgia provides for the postponement of the payment of the state duty or the reduction of its amount. In particular, the parties participating in the process have the right to apply to the court for the postponement of the payment of court costs and the reduction of their amount. But in order to receive this benefits, it is necessary to prove the existence of the relevant material situation. The party is obliged to indicate in the statement the circumstances that confirm the validity of the request and must submit unmistakable evidence. Evidence can be a document about the amount of salary or pension, a document from local authorities about the composition of the family, documents from the employment agency, etc. The court or judge considers the submitted application, after which it makes a decision on the postponement of the payment of court costs or the reduction of their amount. The reason for this is to ensure the equality of the parties and the right of anyone to apply to the court to protect their rights.

Appellant Refusal

It should be noted that the party has the right to refuse the appeal. It is important whether or not the appellant refused to appeal in accordance with the law. The appellant has the right to refuse an appeal. Realization of this right is associated with a certain legal consequence, in particular, the party

²⁵ Judgment of the Court of Appeal of October 04, 2016, №28/1931-16; Judgment of the Court of Appeal of June 28, 2016, №28/2172-16; Judgment of the Court of Appeal of November 03, 2014, 28/6293-14.

that has declared such a refusal loses the right to appeal the decision by way of appeal.²⁶

It is important to distinguish the refusal to appeal a decision from the refusal to appeal. The refusal of an appeal means that the appellant refuses the appeal already filed by him, which is related to another result, namely, in such a case, the appellate court issues a “judgment on the termination of the appellate proceedings.”

Conclusion

The prerequisites for admissibility of the appeal are listed and discussed in the mentioned article. If, upon examination of these prerequisites for admissibility, it is found that any of them exist, the appellate court shall issue a decision to fill the gap, if the gap is of its nature and content such that it can be filled, and shall set a time limit for the appellant to fill the gap. If the defect is not filled within the time limit set by this decision, the appellate court shall issue a decision not to consider the appeal due to its inadmissibility. In the case when there is no such condition of admissibility, which cannot be corrected by its nature and content, and the appointment of a deadline for the correction of the defect is completely irrelevant, then the court issues a ruling on refusing to accept and consider the appeal.

The institution of appellate courts strengthens the responsibility of the first-instance courts, as they review the case both on factual and legal grounds. The existence of appellate courts gives people confidence that if the trial court fails to provide a fair decision, their rights will be protected in a higher court.

Abstract

As is well known, appellate courts are part of the judicial system in almost every country - whereby parties (including corporations) may file an appeal to review a first instance court decision. In this way, the losing party has the chance to have the decision of the first instance court reviewed by the appellate courts - to determine whether or not the first instance court applied the law correctly. The role of the appellate court in Georgia increased significantly after the 28 December 2007 amendments to the Georgian Civil Procedure Code. As a result of these changes, the prerequisites for the admissibility of a cassation appeal became more complicated, while the role and importance of the court of appeal increased. According to the changes introduced - the court of appeal became

²⁶ T. Liluashvili, V. Khrustali, Commentary..., p. 634.

the court of last instance in most cases. All this has placed even more responsibility on the court of appeal.

Georgia has an incomplete (limited) appellate model. This means that the merits of the appeal are tested on the basis of the facts and evidence presented and examined by the court of first instance. As far as new facts and evidence are concerned, their submission to the appellate court is allowed only in cases provided by law. As a result of the amendments, the scope of powers and duties of the court of appeal has been further expanded.

Keywords: court of appeal, admissibility of appeals, civil law.

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