

The Act Amending the Code of Civil Procedure (CCP), which largely came into effect on 7 November 2019, has also remodelled the appellate procedure. We outline below some of the changes of particular importance to litigation parties.

Appeal Deadline

One of the key novelties concerns the deadline for filing an appeal. In principle, it is still two weeks, however, a new three-week statutory deadline has also been introduced for situations when the court president decides to extend the period for drafting a written judgement justification. This may be the case if it is impossible to timely draw up the justification. In such situation, when serving the judgement and the justification upon a party, the court is obliged to notify such party of the extended deadline for filing an appeal. The statutory extension of the appeal deadline to three weeks does not apply, though, to situations when it is entirely impossible to draft the justification. The amendment also abolishes the so-called "straightforward appeal", i.e. one filed without first requesting judgement justification.

Erroneous Facts of the Matter Allegation

The amendment has also specified the grounds for contesting the factual basis for the judgement. Such allegation must indicate the facts of the matter, determined by the court of first instance, which do not reflect the actual circumstances or the facts material to the judgement, which had not been determined by the court. This regulation may help appealing parties formulate the allegation, chiefly raised based on Article 233(1) of the CCP, i.e. one of breaching the free evidence assessment principle, in a more orderly fashion. Failure to indicate particular facts will now be considered a formally faulty appeal to be supplemented. It is also noteworthy that the appealing party referring in the appeal to a fact corroborated by evidence recorded with audio or audio and video recording equipment is obliged to identify the part of such recording concerning that fact. In practice, this will chiefly concern electronically recorded witness testimonies.

Changes to Proceedings Between Instances

The most palpable change has been to proceedings between instances, the burden of which will now rest largely on the court of second instance. As a matter of principle, appeal admissibility will be verified by that court, which may dismiss an appeal, should it deem it inadmissible. Such dismissal decision may now be contested using the so-called horizontal complaint (i.e. one directed to a different panel of judges within the same court). The court of first instance may still control its own jurisdiction, and it may also repeal the judgement and discontinue the procedure if the claim has been withdrawn, as well as discontinue the appellate procedure if the appeal has been withdrawn. Moreover, it has been tasked with sending the appeal to the court of second instance, which it should do in a timely fashion.

Material Reply to the Appeal

The appeal may now be served upon all the participating parties, not just upon the adversary, which entails the obligation to append an adequate number of certified copies. Such parties may also file a reply to the appeal. Under the new legal circumstances, the reply to the appeal takes on a new meaning because only there may the parties other than the appealing party move for conducting a hearing. In a situation where no party has made such motion, the court may hear the appeal in closed session if conducting a hearing is not necessary. As failure to reply to the appeal may cause litigation ramifications (for instance, inability to have one's position heard during a hearing), the two-week deadline for filing it should be deemed as subject to reinstatement. Under the previous law, it gave rise to controversy precisely due to no adverse effects should the deadline be missed.

Closed Session

As noted above, the scope of situations in which the court may hear the case in closed session has been extended. However, the court is bound by a party's motion to conduct a hearing, except for situations where a claim or an appeal has been withdrawn, as well as when a procedure has been rendered invalid.

Staying Judgement Enforcement

A novel solution is the possibility for a court of second instance to stay judgement enforcement prior to entering a cassation. Under the previous regulations, such litigation measure was available only when entering a cassation. Staying judgement enforcement will only be possible upon a party's request (hitherto, a court of second instance could stay judgement enforcement also *ex officio*).

Appeal Upon Obviously Frivolous Lawsuit

An entirely new regulation within the appellate procedure refers to the introduction of the obviously frivolous lawsuit. The judgement in such matter, issued to the claimant (because it is the claimant that receives the dismissing judgement) may be appealed within two weeks following service of the judgement and the justification. A "simplified" manner of hearing such appeals has been introduced – a court of second instance may abstain from summoning to rectify the faults, as well as request that a party pay the fees, and the appeal is not served upon the individual designated as the defendant. In case of any doubts, an appeal is deemed effectively filed with regard to the entire judgement with a motion to repeal or to refer the matter for re-hearing. The court of second instance may issue only two types of judgements: it may dismiss an appeal or – should it not deem the lawsuit obviously frivolous – repeal the judgement and refer the matter to the court of first instance for re-hearing.

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