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ADMISSIBILITY OF LEGAL REMEDIES FILED TO THE SUPREME COURT OF THE REPUBLIC OF MACEDONIA IN CIVIL CASES

The highest judicial bodies are no longer simple interpreters of the law, but active factors in the evolution and further development of the law. This transformation of the role and the tasks of the Supreme Court in the decision-making process necessarily presupposes the existence of appropriate means granting access to this judicial authority, providing the Court an opportunity to achieve individual justice in the particular dispute, but also to contribute to the uniform application of the law and harmonization of the judicial practice. In Macedonia, for many years, the only legal remedy granting access to the Supreme Court in civil matters is the revision, and although the Law does not make a terminological distinction, two separate modes of revision can be distinguished – an 'ordinary revision' and a 'leave to file a revision'. This article will provide a preview on the genesis of the existing regime for access to the highest judicial authority in Macedonia, the particularities of that regime, and an assessment on its effects in the system – does it provide the Supreme Court of the Republic of Macedonia to perform its constitutionally prescribed functions.

Key words: admissibility, leave to file a revision, revision, Supreme Court.

I. Introductory remarks

For a long time the judiciary was only believed to be '*la bouche de la loi*' which was obligated to apply the laws strictly according to the will of the legislator. Nowadays, this traditional position of the highest judicial body is long forgotten. On the contrary, the position of the highest judicial authority in the legal system is constantly modified in order to accomplish wider general interests - to achieve the evolution of law, its adaptation to the contemporary conditions, and simultaneously to achieve harmonization of the judicial practice. Even more, the highest judicial authority can be the catalyst for changes, being best positioned to identify topics it sees as ripe for change whilst deciding on case-by-case basis.[1]

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[1] On the possibility of the Supreme Court acting as a think tank, see J.Bell, *Reflections on continental European Supreme Courts*, Legal Studies, Vol.24 (2004), p.166.

This has its reflection in Macedonian legal system as well. The highest judicial authority in the country - the Supreme Court of the Republic of Macedonia, has a specific position to foster the further development of the law and to contribute to the uniform application of the law provisions.[2] It is even explicitly stated in the Constitution of the Republic of Macedonia that the Supreme Court of the Republic of Macedonia is the highest court in the country which provides for the uniform application of laws by the courts (Art.101). This places the Macedonian Supreme Court in the role of an active factor in the realization of the legal system as a whole.

The accomplishment of these goals set before the Supreme Court of the Republic of Macedonia and the role it performs in the Macedonian legal system is most directly connected to the regime of the legal remedies submitted to the Supreme Court. The access of the parties to the highest judicial authority provides the Supreme Court to gain knowledge of the manner in which the lower courts are deciding the cases. As a matter of fact, the quality of realization of the goals that should be accomplished by the Supreme Court is directly interdependent on the manner of regulating the access to this court by the parties. The Supreme Court will be prevented from performing its functions if the parties do not have a possibility to access the Supreme Court, or if this possibility is set on overly broad basis. In either situation, the result would be similar – failure of the Supreme Court to fulfil its constitutional assignment, to affect the harmonization of the court practice and the subsequent development of the law.

This function of the highest judicial authority in the country is even more emphasised if taken in consideration the functioning of the legal system in Macedonia. Namely, in the years that preceded the shaping of the current regime for granting access to the Supreme Court of the Republic of Macedonia, the socio-political and economic system in the country underwent a fundamental change. The transition of the system to a market economy, the abandoning the system of state ownership and the introduction of the guarantees for the freedom of the market and entrepreneurship were necessarily accompanied by almost daily changes in legislation. In these circumstances, there was a real threat of a different interpretation of the legal provisions by the various courts which applied them.[3] This threat was even more emphasised having in mind the situation in the civil legislation in the country, such as the absence of a Civil Code and the fragmentary regulation of certain areas of civil matters that frequently caused problems in settling the relations among parties in this area.[4]

Currently in Macedonia there is only one legal remedy granting access to the Supreme Court of the Republic of Macedonia in civil matters - revision, as provided in the Civil Procedure Act[5] from 2010 and its latest amendments in 2010[6].This article will provide a preview on the

[2] A number of international documents, especially Council of Europe Recommendations place such a position to the Supreme Courts. Here we will mention: Recommendation R (95)5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases; Recommendation R (81)7 on measures facilitating access to justice, Recommendation R (84)5 on the principles of civil procedure designed to improve the functioning of justice.

[3] According to the Law on the courts (Official Journal of RM, No. 58/2006, 35/2008, 150/2010), the judicial power in the Republic of Macedonia is performed by 27 Primary courts as first instance courts, and 4 Appellate courts, as second instance courts. All these are courts of general jurisdiction (both civil and criminal matters). Only the Administrative court and the High Administrative court are specialized courts which deal with administrative cases.

[4] On the need for codification of civil law domain in Republic of Macedonia, see S. Georgievski, *Kodifikacija na gradjanskoto zakonodavstvo vo Republika Makedonija [Codification of the Civil Legislation in the Republic of Macedonia]*, Pravnik, No. 210 (Skopje, 2009), p.7-17.

[5] Official Journal of the Republic of Macedonia, No. 79/2005, 110/2008, 83/2009, 116/2010, 7/2011 - consolidated text, hereinafter referred to as CPA.

genesis of the existing regime for access to the highest judicial body in Macedonia, the particularities of that regime, and an assessment on its effects in the system – does it provide the Supreme Court of the Republic of Macedonia to perform its constitutionally prescribed functions.

II. Historical development – an overview of the remedies granting access to the Supreme Court of the Republic of Macedonia

The system of legal remedies in Macedonia in the years following the dissolution from the former Yugoslavia, for more than a decade followed the pattern set by the former federal legislation, which was traditionally influenced by Austrian and German civil procedure. The first procedural legislation enacted in the Republic of Macedonia did not introduce great modifications of the possibilities to bring a case before the Supreme Court. Namely, the default manner in which a dispute could have been brought before the Supreme Court was by lodging a revision (in Macedonian – *revizija*), which was an extraordinary legal remedy limited to errors of law (both substantive and procedural).[7] It was admissible under the clearly defined preconditions in Civil Procedure Act of 1998,[8] based on the value of the dispute (*ratione valoris)* and on the subject matter of the dispute (*ratione materiae).*[9] It is obvious that the legislative goal of existence of the revision was to protect the interests of particular parties, allowing access to the Supreme Court in matters of significance from the viewpoint of the parties. The Supreme Court was not authorised neither to admit cases which are not covered by those preconditions, nor to refuse to hear a case if it was admissible under the express provisions of the law.

Nevertheless, it should be emphasised that during that period of time, in the Macedonian civil procedure the revision existed alongside with another extraordinary legal remedy, the so-called 'request for the protection of legality' (in Macedonian - *baranje za zaštita na zakonitosta*). The revision and the request for the protection of legality functioned coherently in the legal system, and, more or less, did not differ in terms of the reasons for filing the remedy. As a matter of fact, the main purpose of the request for protection of the legality was to ensure effective legal protection in the disputes where filing of revision was not admissible (as were, for example, the

[6] Official Journal of the Republic of Macedonia, No.116/2010 from 1 September 2010. These ammendments entered into force within 8 days from their publication in the Official journal, but started applying one year after their entry into force.

[7] As in the most civil law systems, the Supreme Court does not deal with factual matters, and therefore the findings of facts cannot be subject to review before the Supreme Court.

[8] Official Journal of the Republic of Macedonia, No. 33/1998 and 44/2002, hereinafter referred to as CPA of 1998.

[9] More precisely the CPA of 1998 provided that revision was admissible in property disputes in which the claim refers to monetary claims, transferral of objects or performance of any other action, if the value of the contested subject matter of the dispute exceeded 1.000.000 denari (approximately 16.000 Euro), as well as in property disputes in which the claim does not refer to monetary claims, transferral of objects or performance of any other action, if the value of the dispute stated by the claimant in the statement of claim exceeded 1.000.000 denari (Art. 368, para.2 and 3). On the other hand, the CPA of 1998 expressly provided that revision was admissible in a number of cases enlisted in the CPA, regardless of the value of the subject matter of the dispute: in maintenance disputes; in disputes for compensation of damages for loss of maintenance due to death of the provider of the maintenance; in copyrights disputes; and, in disputes relating to the protection and use of inventions and technical improvements, samples, models and trademarks, the right to use of company or name, as well as in cases of disloyal competition and monopolistic behaviours (Art. 368, para.4).

small claims disputes or the disputes for disturbance of possession), and yet there was an imminent need to ensure the uniformity of case law.[10]

However, the key feature that made a distinction between these two legal remedies (and at the same time, the most arguable feature of the request for the protection of legality) was the subject authorised to file the legal remedy. While only the parties were authorised to file a revision and to initiate a procedure before the highest judicial authority, the authorisation to file a request for the protection of legality belonged to another subject - the Public Prosecutor, a body which is completely unconnected to the dispute and the particular parties. Although the participation of the Public Prosecutor in order to secure the protection of the public interests and the uniform application of the law in the civil procedure is not unfamiliar in the countries of the Roman legal circle[11] (such as the authorization of the public prosecutor to file extraordinary legal remedy in Italy - *Il ricorso nell'interesse della legge,* or in Belgium – *Cassatie in het belang der wet),* there was one striking distinction between these legal remedies and the request for the protection of the legality, as it was set in Macedonian legislation before 2005. While these legal remedies do not cause direct effects in the particular litigation, but only have declaratory effects (and act as precedents in future disputes),[12] the request for the protection of legality resulted in review of the decision in the particular litigation, in many occasions even contrary to the parties' disposition. This legal remedy strived to achieve the uniformity of the legal system at the expense of the sanctity of the *res iudicata* principle. It could have been filed as long as three months after the finality of the award, without the consultation and participation of the parties in the dispute, whose particular interests were directly affected by the challenged award, for the purpose of protecting the public interests. For that reason, it was frequently considered that this legal remedy represents *'a result of the reception of Soviet law, and was clearly motivated by the doctrine of (socialist) state paternalism and the protection of State ('public') interests in private law disputes'*.[13] The European court of Human rights, analysing the Soviet model of this legal remedy has itself found that 'the rights of a litigant would be rendered illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official'.[14]

For these reasons, when the new CPA was enacted in 2005, the request for the protection of legality was abolished. Due to the abolishment of the 'request for the protection of legality', the need to provide for wider access to the Supreme Court was met by establishing new criteria for admissibility of the revision and so expanding the scope of 'revisable' cases. In addition, the

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[10] See: V. Velkovski, *Baranje za zaštita na zakonitosta i edinstvena primena na zakonite [Request for the protection of legality and uniform application of laws],* Sudiska revija, Year 10, No. 1, (March 2004), p. 122-123.

[11] On the position and role of the Procurator General and his authority to request cassation of any judgment 'in the interest of law', see K.Kerameus, *Procedural Tools in The Different European States Concerning the Uniform Interpretation of Law by The Supreme Courts: A Comparative Presentation,* Revue hellénique de droit international, Vol.53 (2000), p.617-618.

[12] See the example in Romania, where the solutions given to the law issues subject to judgment are mandatory for the courts, starting with their publication in the country's Official Journal – D. Lupascu, *The Appeal in the Interest of Law in the Drafts of the New Romanian Procedure Codes,* Lex and Scientia International Journal, XVI, Vol. 1 (2009), p.92.

[13] A.Uzelac, *Accelerating Civil Proceedings in Croatia - A History of Attempts to Improve the Efficiency of Civil Litigation,* in: C.H. van Rhee (ed.), History of Delay in Civil Procedure (Maastricht, 2004), p.311.

[14] See ECtHR, Application No.5 2854 /9 9, Ryabykh v. Russia, Judgment of 24 July 2003. On the problems the Russian Law is dealing with in reforming the supervisory review (nadzor) to make it compliant with the ECHR, see W.Pomeranz, *Supervisory Review and the Finality of Judgements under Russian Law,* Review of Central and East European Law Vol.34 (2009), p.15-36.

function of this legal remedy was supplemented: the revision does not solely serve to the private party interest, but it also serves the interest of jurisprudence as a whole. The latter was achieved by introducing the 'leave to file a revision system', which set the aims of the admissibility of the revision beyond the interests in particular case.

III. The features of revision in the Macedonian legal system

Revision in the Macedonian legal system is an extraordinary legal remedy, which can be filed against final, legally binding decisions rendered by an Appellate court, within 30 days upon receipt of a copy of the decision by the parties.[15] Although the CPA does not make a terminological distinction, two different modes of revision can be differentiated under art.372 of the CPA – the 'ordinary' revision and 'the leave to file a revision', given the goals this remedy primarily strives to achieve – individual justice in the particular dispute or uniform application of the law and harmonization of the judicial practice.

A. Admissibility of ordinary revision

The 'ordinary revision' sets the primary standards for the admissibility of revision in the Macedonian civil procedure, and it places the individual interests of the parties and their request to have a lawful decision rendered in the particular dispute in the spotlight. These criteria set the importance of the issue that should be raised before the Supreme Court as seen from the perspective of the parties (expressed in the value of the dispute or the type of dispute).[16] The admissibility of the 'ordinary revision' is determined by applying several criteria – the value of the dispute, the subject matter of the dispute or the procedure that preceded the final, legally binding decision.[17]

Namely, a party can always file a revision if the amount in controversy on review is more than 1.000.000 denari (approximately 16.000 Euro).[18] This criteria, used as a primary method for accessing the highest judicial body, sees the importance of the questions raised as dependent from the interests at stake – the bigger the value of the disputed rights, the greater the necessity to have the Supreme court decide in the particular dispute. The *ratione valoris* criterion in the Macedonian civil procedural system has been changed in several occasions. Namely, when the

[15] The legal theory usually states that the possibility to file a revision (regardless whether an ordinary revision or a leave to file a revision is admissible in the particular dispute) is connected to the so-called 'ban for skipping instances', meaning that it is only possible to initiate proceedings before the highest judicial authority only if an appeal was previously filed in the particular dispute. If an appeal was not filed against the first-instance court decision, there is no possibility for filing revision, even if the prerequisites for admissibility of revision are met in the particular dispute – see A.Janevski, T.Zoroska-Kamilovska, *Gragansko procesno pravo, kniga prva, parnicno pravo, vtoro izmeneto i dopolneto izdanie [Civil procedural Law, Book I, Litigation, Second Revised Edition]*, (Skopje, 2012), p.482.

[16] On the different purposes of legal remedies see J.A. Jolowicz, *On civil procedure*, (Cambridge University Press, 2000), p.316.

[17] However it should be noted that filing revision is not admissible in a number of disputes specifically enlisted in the CPA or other laws, regardless whether any of these criteria is met – such as the disputes for disturbance of possession (Art. 414 (4) of CPA), or small claims disputes (Art.438 (4) of CPA). Apart from the CPA, there are a number of procedural, as well as substantive laws that expressly exclude the possibility to file a revision in certain cases, such as the acts regulating the enforcement procedure, the procedure for security of claims, the non-contentious procedure, and the family relations.

[18] See: Art.372 (2) of CPA.

CPA was originally enacted in 2005, the threshold was lowered from the previous 1.000.000 denari to only 500.000 denari (approximately 8.000 Euro), which was then explained by the legislator with the need to broaden the possibilities to bring a dispute before the Supreme Court, given the abolition of the request for protection of legality. However, this threshold was again raised to 1.000.000 denari with the amendment of the CPA in 2010, and in this occasion the legislator failed to provide a reason why this criterion was modified once again. We can only assume that the underlying reason was the need to reduce the backlog of the Supreme Court.

Additionally, even if the *ratione valoris* criterion is not met, filing revision may be admissible if it relates to a particular type of dispute bearing in mind the specific interests related to the public concerns of the state. The CPA (art.372, para.3) provides that regardless of the value of the dispute, revision is always admissible in the following disputes:

- maintenance disputes;
- disputes for compensation of damages for loss of maintenance due to death of the provider of the maintenance;
- labour disputes due to termination of employment;
- copyrights disputes, excluding monetary claims arising from these disputes;
- disputes relating to the protection and use of inventions and technical improvements, samples, models and trademarks, the right to use of company or name, as well as in cases of disloyal competition and monopolistic behaviours, excluding monetary claims arising from these disputes;

A specific solution is the last ground for the admissibility of revision, which is set using the procedural criterion – revision is always admissible in the disputes where in the appeals procedure, the decision rendered by the Primary Court was modified by the second-instance court.[19] This possibility was added with the amendments of the CPA in 2010, and its underlying basis is the need to secure the application of the constitutionally guaranteed principle for dual-instance deciding in disputes when determining the factual issues. It primarily relates to the cases where the Appellate court has determined a different factual basis in the particular case, especially where a hearing was held in the course of the appeals procedure. However, this provision goes further on – it brings the possibility to file a revision not just in these cases where the Appellate court has found a completely different factual basis of its decision, but much broader – literally in every dispute where the Appellate court has made a modification to the decision rendered by the Primary court.[20]

B. Admissibility of the leave to file a revision

In 2005, the leave to file a revision (in Macedonian - *vonredna revizija*) was introduced in Macedonia, as an exception from the standard regime – allowing the parties to file a revision in the disputes where, according to the primary criteria of value of the dispute, filing of revision is not allowed. One of the reasons for the introduction of this legal remedy was to compensate the abolishment of the request for the protection of legality, and to provide the Supreme Court

[19] See: Art.372 (2), line 6 of CPA.

[20] Such situation would be for example, where the Appellate court modifies the decision due to an erroneous application of the substantive law on a prior correctly determined factual basis - see: Art.361 of CPA. For further elaboration see A.Janevski, *Dozvoljenost revizije prema Zakonu o izmenama i dopunama ZPP Republike Makedonije iz 2010. godine [Admissibility of revision according to the Law on amendments and modifications of the CPA of 2010]*, Pravni zivot, Vol.11 (2011), p.741.

with an efficient tool to affect the uniform application of the law and the harmonization of judicial practice.

Contrary to the 'ordinary revision', with the leave to file a revision the importance of the issue that should be raised before the Supreme Court is seen from the perspective of the wider public interest: from the need to accomplish or preserve the uniformity of the judicial practice, or to provide an opportunity for the highest judicial authority to deliver its opinion upon important legal issues and to contribute for the further development of the law.[21] In these circumstances, the interests of the parties of the particular dispute have secondary importance. Therefore it should be stressed that the success of the leave to file a revision and the goals it strives to achieve are ultimately dependant on the guidance the appellate courts have in deciding on granting this legal remedy – the legislation must necessarily identify some kind of criteria. An effective leave to file a revision requires the infusion of substance into the public importance formula for leave applications.[22]

Although different models were taken into consideration, the Macedonian legislator has eventually decided to leave the power to grant a leave to file a revision not in the hands of the same body that will decide upon their merits – the Supreme Court of the Republic of Macedonia, but in the hands of the Appellate courts. Although the German and Austrian patterns have made a major impact, Macedonian legislator has authentically tailored its system of the leave to file a revision, with a number of specificities. An outline will be provided of the preconditions for admissibility of this legal remedy introduced in 2005, and their subsequent modification in 2010.

Namely, the Art.372 (4) of the CPA of 2005 prescribed several prerequisites for granting leave to file a revision:

- Leave to file a revision can be granted only in disputes where the filing of the revision according to the criteria *ratione valoris* and *ratione materiae* is not admissible (1.);
- The leave to file a revision cannot be granted in disputes where the CPA or other act expressly prescribes that filing a revision is not admissible (2.);
- The court of second instance - the appellate court should expressly state in the tenor of the decision upon appeal, that filing a revision against that decision is admissible (3.);
- The appellate court can render that decision if it finds that the decision in the dispute depends on resolving a substantive or procedural issue relevant for securing the unified application of the law and harmonization of the judicial practice (4.);
- In the reasons of the decision, the appellate court is obliged to state specifically the legal issue on whose basis the leave to file a revision was granted and to state the reasons due to which the court finds the issue to be of importance for securing the uniform application of the law and harmonization of the judicial practice (5.).

1. The leave to file a revision in the Macedonian civil procedure bears the characteristics of a subsidiary legal remedy. Namely, a leave to file a revision can be granted only in disputes in which revision is not admissible under the ordinary criteria - *ratione valoris, ratione materiae* or

[21] A. Galić, *The Role of the Supreme Court in Creating Precedents in Slovenian civil procedure*, in: Los recursos ante los Tribunales Supremos en Europa [Appeals to Supreme Courts in Europe], (Barcelona: Difusión Jurídica y Temas de Actualidad, 2008), p. 264.

[22] See B. Wilson, *Leave to appeal to the Supreme court of Canada*, Advocates' Quarterly, Vol.4, n 1 (1983), p.7.

the procedural criterion. As previously noted, the CPA of 2005 states as a general rule that filing a revision is admissible in all disputes where the value of the dispute exceeds the set monetary threshold (Art.372(2) of CPA of 2005). In addition, several other acts prescribed that filing a revision is always admissible in certain disputes. For example, the Macedonian Family Act[23] prescribes that filing a revision is always admissible in disputes for determining and contesting paternity and maternity (Art.271 of the Family Act).

2. The appellate court can grant the leave to file a revision only if the CPA or other act does not exclude the admissibility of filing a revision in certain disputes, such as the disputes for disturbance of possession (Art. 414 (4) of CPA of 2005), or the small claims disputes (Art.438 (4) of CPA). Accordingly, the appellate courts do not have the power to grant a leave to file a revision in these disputes.

3. The CPA expressly provides that the granting leave to file a revision should be contained in the tenor of the decision rendered by the appellate court. It should be taken that in situations when the appellate court has failed to state that revision against that decision is allowed in the tenor of the decision, but however has stated reasons for granting the leave to file a revision in the statement of reasons, corrections to the decision can be made pursuant to Art.331 of CPA,[24] which states that *'mistakes in names and numbers, as well as other obvious spelling and calculating mistakes, flaws in the form and inconsistence of the copy of the judgment with the master copy shall be corrected by the president of the council, i.e. the sole judge at any time'*.

Contrary to this, if in the tenor nor in the statement of reasons of the decision the appellate court has not stated that filing a revision against that decision is allowed, the appellate court would not be authorised to grant the leave to file a revision with an additional decision,[25] since in the given circumstances the court has not performed an omission to decide. Namely, the granting of the leave to file a revision, pursuant to the provisions of the CPA, is not a matter of the parties' right, but a discretionary authorization of the competent court. Accordingly, although the parties are free to 'remind' the court of the possibility to use that authorization,[26] (i.e. the possibility to grant filing of revision in the current dispute), it does not rise up to a situation where the court has failed to decide upon all the issues he was obliged to decide in accordance with Art.328 of CPA.[27]

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[23] Official Journal of RM, No. 80/1992, 9/1996, 38/2004, 33/2006, 84/2008, 67/2010, 156/2010, 39/2012 and 44/2012.

[24] See also V. Prančić, *Revizija po dopuštenju drugostupanjskog suda [Revision permitted by appelate court]*, Pravo u gospodarstvu, No. 1/04, Vol.43 (2004) p.70-71.

[25] In German law also *'a subsequent leave after rendering the judgment is void'*. See: P.Gottwald, *Review Appeal to the German Federal Supreme Court after the Reform of 2001*, in: Los recursos ante los Tribunales Supremos en Europa [Appeals to Supreme Courts in Europe], (Barcelona: Difusión Jurídica y Temas de Actualidad, 2008), p.94.

[26] The parties might bring out such 'reminder' to the court in the statement of claims itself, or in the appeal filed against the first-instance decision or even in a separate submission filed before the case-file was sent to the second-instance court. See I. Gović, *Revizija u svjetlu poslednih izmjena u dopuna Zakona o parničnom posupku (ZPP/03) i na njima utemeljenoj sudskoj praksi [Revision in the light of the course of the last amendments to the Civil Procedure Act (CPA/03) and the case law based on them]*, Collection of papers of the Law Faculty at the University of Rijeka, Vol.29, No.2, (2008), p. 1102.

[27] This states that '*If the court has failed to decide upon all the claims that it was obligated to decide with the decision, or has failed to decide only upon part of the claim, the party can within 15 days as of receiving the decision suggest the court to supplement the decision*'.

Hence, upon a specific proposal by the parties to grant the leave to file a revision contained in the appeal, the court is not obligated to render a separate decision, nor is he obligated to state the reasons why in the particular dispute he has not granted the leave to file a revision. Therefore, by the general regulation of the leave to file a revision in the Macedonian civil procedure, it is not a matter or a right of the parties, but an instrument aimed at securing the wider, common interests - unification of the application of the law and harmonization of the judicial practice. Nevertheless, there have been examples in the judicial practice to render an additional decision granting the leave to file a revision, after the decision on the appeal has been deliberated, upon the parties' proposal.[28]

4. The appellate court is authorised to grant the leave to file a revision only in cases which raise a legal question requiring clarification, whether it would be a substantive or a procedural in nature. A substantive issue on which the decision of the appellate court is dependant, can be considered to be any legal rule that consists an element of the abstract *praemisae major* of the logical syllogism of the deliberation of the decision and ruling on the merits of the dispute.[29] It would comprise any issue where due to the wrong application of the substantive law and the wrong resolving of the substantive issue, the court has rendered a decision that should not have been rendered. The reviewable areas of law may include international treaties ratified by the domestic legislator, other norms of international law, foreign law, and even general principles of law.[30]

The CPA itself does not regulate this issue in detail by stating as example situations where it should be taken that it comes to such issue, but rather limits itself to only stating a general formulation.[31] The procedural theory takes that, for example, there would be such issue in the following situations:

- The revision court has not yet taken a stand upon that issue on a department session or a general session, and there is an issue creating diverse practice between the appellate courts;
- The revision court has not yet taken a stand upon that issue on a department session or a general session, and it can be expected that the appellate courts might take different stands upon that issue;
- The revision court has taken a stand, but the appellate decision is based on an opinion that is not in accordance with the stand of the revision court;
- The revision court has already taken a stand upon that issue and the appellate decision is consistent with that stand, but the appellate court finds that the judicial practice should be reconsidered.[32]

By the same token, the decision in the dispute would be depend from the resolving of a procedural issue if a different assessment of that issue would have led to different resolution of

[28] For e.g. Decision of the Appellate Court in Skopje, GŽ.No.587/07.
[29] See: S. Triva, M. Dika, *Građansko parnično procesno pravo [Civil procedural Law]*, (Zagreb, 2004), p. 682.
[30] K.Kerameus, *op.cit*, p.619.
[31] It is often stated that 'the grounds on which appelate courts grant or deny leave are somewhat obscure and run counter to counsel's instincts' – G.Hall, *Application for leave to appeal: The Paramount Importance of Public Importance*, Advocates Quarterly. Vol.22 (1999), p.88.
[32] M. Dika, *Novo uređenje revizije protiv presude [New arrangement of the revision against the judgment]*, Zbornik 47 susreta pravnika Opatija'09, Hrvatski savez udruga pravnika u gospodarstvu, (Opatija, 20-22 svibnja 2009), p. 214.

the dispute in a procedural sense. Such procedural issue should address those procedural violations for which 'ordinary' revision is allowed, or respectively it should be taken that a leave to file a revision should not be granted for questions that do not represent an absolute or relative violation of the rules of CPA. Similarly, the CPA only uses a general formulation, but it does not state as example situations where it should be taken that such issue exists.

According to the CPA, this substantive or procedural issue on which the deciding in the dispute is dependant, should be relevant for securing the unified application of the law and harmonization of the judicial practice.[33] As a matter of fact, that issue should have a preventive or a corrective effect. The preventive effect would imply that by taking a clear and distinctive stance on a particular issue, the highest judicial authority would reduce the possibility of creating diverse practice by the lower court in future. By the same token, the corrective effect would imply that by taking a stance on a particular issue, the Supreme Court would create the basis for harmonization of the current divergent practice of the lower courts, or the basis for changing the practice of those courts.

However, the Department of civil matters at the Supreme Court has taken the stand[34] that the legal issue for which the revision is submitted would not be relevant for securing the unified application of the law and harmonization of the judicial practice, in situations when the Supreme Court has already expressed its position on that issue, regardless whether the stand was taken in the form of a legal opinion or conclusion, or through deciding in a particular dispute. Although this position of the Supreme Court is not unfounded, yet we consider it to be problematic for ensuring the further development of the law. Namely, one of the main goals of the Supreme Court is to be a carrier of the evolutionary development of the law, which consequently, could impose the need to reconsider and to review the positions that the Supreme Court has taken on a particular issue. In Macedonia, this need might be even more emphasised having in mind the prospective changes in the Macedonian legal system conditioned by the EU accession process, and influenced by international agreements and decisions of the European Court of Human Rights. Hence, there would be an imminent need to grant leave to file a revision in every situation where it could be assessed that it is necessary to achieve further development of law and its adaptation to the new conditions and circumstances.

The granting of a leave to file a revision should not be taken as a sign of uncertainty, reserve and lack of persuasion of the appellate court in the legality and grounding of his decision on a particular substantive or procedural issue. On the contrary, the leave to file a revision aims to ensure the uniform application of the law in a situation where there are inconsistencies, gaps and ambiguities in the legislation. As a matter of fact, the leave to file a revision should encourage the appellate courts to establish timely and active communication and information with each other, and even initiating legal issues upon which a leave to file a revision will be granted. Additionally, the Supreme Court in the reverse sense through the decisions rendered

[33] It can be assumed that the legislators' intention in prescribing such broad terms on the adminissibility of the leave to file a revision was to provide for a possibility for evolution of the Supreme court's interpretation of these terms over the years to come, which ultimately bears the risk of 'too frivolous' interpretation of these terms by the various appelate courts applying these provisions. On the boundaries of evolution of the courts' interpretation, see R. Telfer, *A Historical Comparison of Certiorari Review Standards in Florida's Appellate Courts*, Stetson Law Review, Vol.42 (2013), p.525-544.

[34] Pravno milsenje na Vrhovniot sud na Republika Makedonija *[Legal opinion of the Supreme Court of the Republic of Macedonia]*, 08.07.2008, available at: http://www.vsrm.mk/Pravni_mislenja_i_stavovi.aspx, last accessed on 09.03.2014.

upon the submitted revisions and the positions taken in those decisions, will inform the appellate courts, and accordingly the primary courts of their position in particular disputes, and in that manner conduce to the achievement of the unified application of the law and harmonised judicial practice. [35]

5. The initial solution in CPA of 2005 provided for an active role for the appellate courts in the process of granting the leave to file a revision. The court was obliged to state, in the statement of reasons of the decision, specifically the legal issue on whose basis the leave to file a revision was granted, and to state the reasons why he considers that issue to be essential for securing the unified application of the law and harmonization of the judicial practice. The appellate court was obligated to clearly differentiate and elaborate on the disputed issue, so that the Supreme Court could assess whether that issue is a legal issue important for the deliberation.

Indeed the CPA provided for a dual obligation for the appellate courts: first, concretely, clearly and undoubtedly to state the legal issue and second, to elaborate on the reasons due to which the leave to file a revision was granted in the particular dispute. This legal formulation caused the greatest problems in the practice. The appellate courts tended to fulfil this prerequisite to grant the leave to file a revision in different manners, which consequently led to diversity in the application of this legal remedy.

In order to overcome the diversity, the Supreme Court has taken the a rather restrictive stand that

> *[T]he appellate courts are obligated to define in the statement of reasons of the decision in a clear and unambiguous way the substantive or procedural issue on which the decision in the dispute depends and the reasons why they consider that issue to be essential for securing the unified application of the law and harmonization of the judicial practice, by stating the final decisions rendered by the same court or by another court in the Republic of Macedonia upon the same legal issue that solve the issue in different manner*.[36]

The Macedonian Supreme Court has furthermore taken a stand that the *'revisions filed against second-instance decisions in accordance with the Art.372 (4) of the CPA (referring to the leave to file a revision), which do not meet the legal requirements, cannot be dismissed by the revision court, and such revision should be rejected as unfounded'*.[37] According to the Supreme Court's position, when the appellate court has failed to elaborate on the reasons for granting the leave to file a revision, and to differentiate the particular legal issue arisen in the decision-making process before the second-instance court, which is important for the unified application of the law and harmonization of the judicial practice, by citing final decisions that decide upon the same substantive or procedural issue in a different manner, should be rejected as unfounded.[38] In the practice, this happened very rarely.[39]

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[35] See D.Uzunov, Vonredni pravni lekovi [Extraordinary legal remedies], Pravnik, No.177, (Skopje, 2007), p.50.
[36] Ibid.
[37] Ibid, para.3.
[38] See: Decision of the Supreme Court of the Republic of Macedonia REV No.508/2008; Decision of the Supreme Court of the Republic of Macedonia REV No.991/2008; Decision of the Supreme Court of the Republic of Macedonia REV No.1316/2008; Decision of the Supreme Court of the Republic of Macedonia REV No.305/2009.
[39] According to Safet Aliu, judge of the Supreme Court of the Republic of Macedonia, before 2011, upon a granted leave to file a revision, the Supreme Court has only decided on the substance of the dispute in two cases – see

Hence, the accomplishment of the goals set to the leave to file a revision (unification of the application of the law and harmonization of the judicial practice), and furthermore, the realization of the constitutionally prescribed role of the Macedonian Supreme Court, is necessarily dependant on the performance of the appellate courts. Their failure to meet the legal requirements for granting a leave to file a revision would prejudice the resolution of a certain contentious issue in the judicial practice and eventually, that issue will continue to create diversity among the lower courts.

With the amendments of the CPA of 2010, the jurisprudence of the Supreme Court was incorporated in the legislative solution. The CPA itself now provides for an express obligation for the appellate court, amongst other prerequisites, to give indication of the lack of homogeneous application of the law and to cite the final, legally binding decisions that indicate its existence. This position of the Supreme Court, and subsequently of the legislator, excluded the possibility to grant a leave to file a revision in the disputes where it could be expected that the appellate courts might take different stands, and suspended the possibility for the highest judicial authority to act pre-emptively in relation to the possibility of creating divergent practice by the lower courts. Thus, the role of the Supreme Court to secure the harmonization of the judicial practice is reduced to undertaking corrective measures once the lower courts have created diverse practice in regard to the particular issue. This solution opens the possibility for emergence of diversity in the process of decision-making of the lower courts, which, consequently, might prejudice the equality of the citizens before the law. According to this solution, the Supreme Court will have the possibility to affect the unified application of the law and the harmonization of the judicial practice only after the lower courts have already rendered final decisions which decide the contested issue in a different manner.

Moreover, it is questionable whether in every particular dispute the appellate court will have the possibility (and possibly the incentive) to trace decisions of different courts relating to the identical issue, which have decided the aforementioned issue in a different manner. This problem is even more emphasised having in mind that in Macedonia, being civil law country, the case law does not have the relevance of a mandatory source of law, and consequently, the publication of judicial decisions in specialised editions is a rare occurrence. The legislator has made an attempt to bridge this problem in a different manner – the amendments of the CPA of 2010 introduced the obligation for the courts to publish the decisions on their web-sites within two days after the decision has been prepared in writing[40]. However, in the practice, these provisions do not seem to provide an adequate solution to the problem.

IV. The effects of the remedies granting access to the Supreme Court of the Republic of Macedonia

It is hard to provide a comprehensive assessment of the functioning of the Supreme Court, and to the effectiveness of the different modes of revision providing the Court to fulfil its

S.Aliu, Izmenite na Zakonot za parnicnata postapka (ZPP) vo odnos na revizijata [The amendments of the Civil Procedure Act (CPA) regarding the revision], Delovno pravo, No.24 (Skopje, 2011), p.66.

[40] See art.326 para.4 from the CPA. The manner in which the decisions are published on the court's web-sites is governed by the Law on managing the movement of the court decisions, which provides that prior to publishing the decisions, an authorised court clerk should 'anonymize' the decision, by removing the personal information of the parties – see art.10 of the Law on managing the movement of the court decisions (Official journal of the Republic of Macedonia, No.171/2010)

constitutionally assigned functions, due to several reasons. Namely, all the revisions filed to the Supreme Court are recorded in a single registry book – 'R', regardless whether they are filed as an 'ordinary revision' or a leave to file a revision granted by the Appellate courts.

When it comes to the leave to file a revision, the general impression is that the number of granted leaves to file a revision is small. For example, in the first three years after the introduction of this legal remedy, the Appellate court of Skopje has granted a leave to file a revision in approximately thirty disputes, most of which were later on rejected by the Supreme Court. Taking in consideration the fact that the Department of Civil matters at the Macedonian Supreme Court annually receives more than 1300-1500 revision cases, these numbers show the pettiness of this legal remedy in the practice of the Macedonian Supreme Court. This is partly due to the vague definition of this legal remedy in the CPA, but also to the fact that the leave to file a revision significantly deviates from the procedural traditions in Macedonia, which resulted in the courts having a reserved position in the application of this institute and applying a rather restrictive approach to the leave to file a revision.

The general data shows variations in the caseload of the Supreme Court of the Republic of Macedonia in deciding revision cases.

Table 1: Caseload of the Supreme Court of the Republic of Macedonia in civil cases 2006-2013[41]

Year	Backlog at the beginning of the year	Incoming cases	Resolved cases	Backlog at the end of the year
2006	1.011	1.635	1.224	1.422
2007	1.422	1.499	1.358	1.563
2008	1.563	1.641	2.025	1.179
2009	1.179	1.364	1.664	861
2010	858	1.540	1.144	1.254
2011	1.447	1.599	1.033	2.005
2012	2.005	1.300	1.423	1.855
2013	1.855	1.482	1.864	1.461

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The data shows the caseload of the Supreme Court of Macedonia in the years when the regime under the CPA of 2005 applied (2006 - 2011) and the two years when the modifications of the CPA came into force (2012 and 2013).[42] First, it should be noted that the data shows

[41] Source: Reports for the work of the Supreme Court of the Republic of Macedonia, available at: http://www.vsrm.mk/Statistika.aspx, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2006.pdf, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2007.pdf, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2008.pdf, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2009.pdf (last accessed on 09.03.2014)

[42] As previously stated (*supra* n.6) the amendments of the CPA of 2010, introducing several changes to the regime of the revision (increased monetary threshold, introduction of the procedural criterion, more restrictive prerequisites for the leave to file a revision) started applying from September 2011. For that reason, we will review the data from

certain inconsistencies regarding the backlog of the Court and the incoming and resolved cases within certain years,[43] which we can only assume is due to some kind of a technical error in the reports. According to the reports, a great proportion of the revisions filed goes to revisions filed in labor disputes – their number reaches up to 66,5% of the total revisions filed in 2006 or 49,3% in 2008, followed by disputes concerning compensation of damages, debt recollection and ownership disputes.[44]

The data shows great variations in the caseload of the Court in different years (the ratio between the incoming and resolved cases per year), so it would be difficult to draw accurate conclusions to what extent the regime for admissibility of the revision has an impact on the work of the Court. The data shows a peak in the number of incoming cases in 2006 (immediately after the lowering of the monetary threshold for admissibility of revision with the CPA of 2005) which reaches up to 1.635 cases, and a drop in the first year following the amendments of the revision regime in 2012 – decreasing to 1.300 cases per year, which is again followed by an increase in 2013.

The same is valid for the backlog of the Court – the Court has managed to decrease its backlog under 1.000 cases in 2009, only two years later increase it to incredible 2005 cases in 2011, and then again to reach a drop in 2013. Even the efficiency of the Supreme Court and its ability to deal with potential backlog varies in different years – if used the clearance rate index, devised by the European Commission for the Efficacy of Justice (CEPEJ)[45] to access the performance of the courts, it shows a specific two-year cycle in the performance of the Supreme Court of the Republic of Macedonia – the Court in certain years struggles with the inflow of cases, then manages to reach a clearance rate of over 120% (and even decrease the backlog to 861 cases in 2009 – see Table 1 *supra*), and then again brings the clearance rate below 75%, followed by another peak in 2013.

2006 to 2011 as time frame when the prior regime of the revision was applicable, and 2012 and 2013 as years when the modified regime of the revision was applied.

[43] Such is the example in 2010, where the reports state that there was a total number of 1254 unresolved cases at the end of 2010, and a number of 1447 unresolved cases at the beginning of the next year – 2011, or in several years - 2009, 2011, 2012, 2013, where there is a mismatch between the total number of cases before the Court, the number of resolved cases, and the remaining backlog at the end of the year.

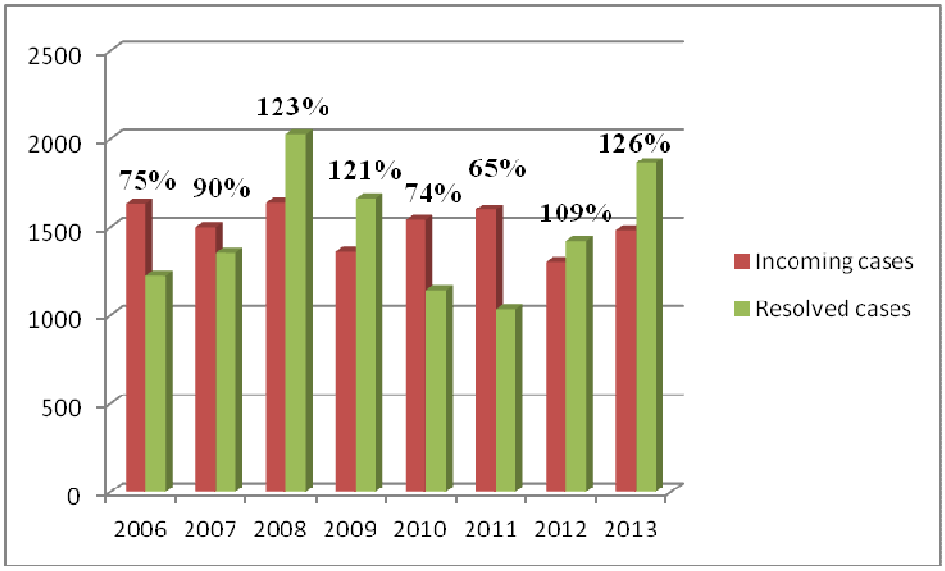
[44] See page 9 of the Report for the work of the Supreme Court of the Republic of Macedonia in 2006, and page 11 of the Report from 2008.

[45] In order to develop methods for assessment of the application of the principle of fair trial within the different judicial systems, CEPEJ has developed performance indicators of courts at a European level. The clearance rate shows how the court or judicial system is coping with the in-flow of cases, and is obtained when the number of resolved cases is divided by the number of incoming cases and the result is multiplied by 100 –

$$\text{Clearance Rate}\,(\%) = \frac{\text{resolved cases}}{\text{incoming cases}} \text{x}\,100$$

see GOJUST Guidelines, CEPEJ(2008)11, https://wcd.coe.int/ViewDoc.jsp?id=1389931&Site=COE

Figure 1: Clearance rate of revision cases before the Supreme Court of the Republic of Macedonia[46]



The time elapsed from the latest modifications of the regime of the revision in the Macedonian legal system is still too short, to make it possible to draw valid conclusions on the suitability of the preconditions for accessing the Supreme Court prescribed in the currently applicable law, and how they affect the performances of this judicial body. Whether this regime is more suitable for achieving individual justice in the particular dispute, and whether and to what extent it provides the Supreme Court the possibility to foster the uniform application of the law and harmonization of the judicial practice, remains to be seen in the years to come.

BIBLIOGRAPHY

- Aliu, S., Izmenite na Zakonot za parnicnata postapka (ZPP) vo odnos na revizijata [The amendments of the Civil Procedure Act (CPA) regarding the revision], Delovno pravo, No.24 (Skopje, 2011), p.66.
- Bell, J., *Reflections on continental European Supreme Courts*, Legal Studies, Vol.24 (2004).
- Bobek, M., *Quantity or Quality? Reassessing the Role of Supreme Jurisdictions in Central Europe*, The American Journal of Comparative Law, Vol.57 (2009).
- Dika M., *Novo uređenje revizije protiv presude [New arrangement of the revision against the judgment]*, Zbornik 47 susreta pravnika Opatija'09, Hrvatski savez udruga pravnika u gospodarstvu, (Opatija, 20-22 svibnja 2009).
- Galić A., *The Role of the Supreme Court in Creating Precedents in Slovenian civil procedure*, in: Los recursos ante los Tribunales Supremos en Europa [Appeals to Supreme Courts in Europe], *(*Barcelona: Difusión Jurídica y Temas de Actualidad) (2008).

[46] Source: Reports for the work of the Supreme Court of the Republic of Macedonia, available at: http://www.vsrm.mk/Statistika.aspx, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2006.pdf, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2007.pdf, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2008.pdf, http://www.vsrm.mk/cms/FCKEditor_Upload/File/izvestaj-VSRM-2009.pdf (last accessed on 09.03.2014)

- Georgievski S., *Kodifikacija na gradjanskoto zakonodavtsvo vo Republika Makedonija [Codification of the Civil Legislation in the Republic of Macedonia]*, Pravnik, *No. 210. (*Skopje 2009),
- Gottwald P., *Review Appeal to the German Federal Supreme Court after the Reform of 2001*, in: Los recursos ante los Tribunales Supremos en Europa [Appeals to Supreme Courts in Europe], *(*Barcelona: Difusión Jurídica y Temas de Actualidad, 2008).
- Gović I., *Revizija u svjetlu poslednih izmjena u dopuna Zakona o parničnom posupku (ZPP/03) i na njima utemeljenoj sudskoj praksi [Revision in the light of the course of the last amendments to the Civil Procedure Act (CPA/03) and the case law based on them]*, Collection of papers of the Law Faculty at the University of Rijeka, Vol.29, No.2, (2008).
- Hall, G., *Application for leave to appeal: The Paramount Importance of Public Importance*, Advocates Quarterly. Vol.22 (1999).
- Janevski, A., Zoroska-Kamilovska, T., Gragansko procesno pravo, Kniga prva, Parnicno pravo, vtoro izmeneto i dopolneto izdanie [Civil procedural Law, Book I, Litigation, Second Revised Edition], (Skopje, 2012).
- Janevski, A., Dozvoljenost revizije prema Zakonu o izmenama i dopunama ZPP Republike Makedonije iz 2010. godine [Admissibility of revision according to the Law on amendments and modifications of the CPA of 2010], Pravni zivot, Vol.11 (2011).
- Jolowicz, J.A,, On civil procedure, (Cambridge University Press, 2000)
- Kerameus, K., *Procedural Tools in The Different European States Concerning the Uniform Interpretation of Law by The Supreme Courts: A Comparative Presentation*, Revue hellénique de droit international, Vol.53 (2000).
- Lupascu, D., *The Appeal in The Interest of Law in The Drafts of The New Romanian Procedure Codes*, Lex and Scientia International Journal, XVI. Vol. 1 (2009).
- Prančić V., *Revizija po dopuštenju drugostupanjskog suda [Revision permitted by appelate court]*, Pravo u gospodarstvu, No. 1/04, Vol.43, (2004).
- Pomeranz, W., *Supervisory Review and the Finality of Judgements under Russian Law*, Review of Central and East European Law Vol.34 (2009).
- Telfer, R., *A Historical Comparison of Certiorari Review Standards in Florida's Appellate Courts*, Stetson Law Review, Vol.42 (2013).
- Triva S., Dika M., *Građansko parnično procesno pravo* [Civil procedural Law], (Zagreb, 2004).
- Uzelac A., *Accelerating Civil Proceedings in Croatia- a History of Attempts to Improve the Efficiency of Civil Litigation*, in: C.H.van Rhee (ed.), History of Delays in Civil procedure, (Maastricht, 2004).
- D.Uzunov, Vonredni pravni lekovi [Extraordinary legal remedies], Pravnik, No.177, (Skopje, 2007).
- Velkovski V., *Baranje za zaštita na zakonitosta i edinstvena primena na zakonite [Request for the protection of legality and uniform application of laws]*, Sudiska revija, Year 10, No. 1, (March 2004).
- Wilson, B., *Leave to appeal to the Supreme court of Canada*, Advocates' Quarterly, Vol.4, n 1 (1983).