

**Persons Authorized for Court Decision Appeal***Irine Rokva, PhD Student*

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[Doi: 10.19044/esipreprint.6.2023.p303](https://doi.org/10.19044/esipreprint.6.2023.p303)

Approved: 13 June 2023

Posted: 15 June 2023

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*Cite As:*Rokva I. (2023). *Persons Authorized for Court Decision Appeal*. ESI Preprints.<https://doi.org/10.19044/esipreprint.6.2023.p303>**Abstract**

The study aims to give equal time to the issue provided by the Civil Procedure Code - the person's access to one of the legal mechanism - one of the prerequisites- not to review party's claim without any complaint (appeal, cassation, the private complaints). This, therefore, is linked to the subjects of the determination of the appeal court's decision. The Civil Procedure Code (Code of Civil Procedure, Article 364, Article 391 of the first part, the second part of Article 414) refers to the circle of persons having the right to appeal the court decision. Such persons include the parties and third parties with an independent request. In the court practice, this problem arose concerning such persons who do not belong to the above mentioned list and are: a) persons who may not participate at any capacity in a particular dispute (the contested decision in particular, not this or that dispute in general), however, the decision directly affected their legal rights; b) third parties who claim to be submitted to the Independent, which also are undoubtedly interested in the outcome. This issue resulted to dissension among scientists, as well as the different legal practice. However, in recent years, the legal judicial tried in solving the problem. From the Supreme Court's practice, which is the instance that states the court practice, it turns out that the right of claim in the Court of Appeal and Cassation has persons who are substantially affected by the challenged decision. Nevertheless, the Court of Cassation in its judgments directly and clearly did not reply to the question of whether third parties without any independent request have the private right of appeal. The analysis provides the basis for admission to the practice of reasonable doubt. It states that the above-mentioned persons have the right to appeal against the decisions, whether and to what extent is the contested

decision and, in particular, the operative part of these legal interests. Thus, the present study confirmed the relevance of these issues as a scientific and practical arena arising divergence. The task, however, posed the problem of the rate of the first civil procedural law and, on the other hand, the practice originated based on the legal basis of needs that require specific ways. This is aimed at preventing the right of access to undue restrictions and specific legal persons concerned in court to appeal the decision unlawful rejection course.

Keywords: Appeal, Court decision, Circle of persons, Legal rights, Independent request, Third parties

Introduction

The right to access to the court is a legislative guarantee for each person to protect his/her violated lawful right.

A person's right to appeal the court without obstruction is enshrined in Article 42 of the Constitution, which states that every human being has the right to appeal to the courts to protect their rights and freedoms (The Constitution, 1995). This provision is a response to the first part of Article 2 of the Civil Procedure Code, according to which each person is guaranteed the right to court (Code of Civil Procedure, 1997).

At the same time, the access to court has become a theme for many decisions of the European Court of human rights. As for the "Human Rights and Fundamental Freedoms Convention" Article 6, it refers to a fair trial. However, the first paragraph states that in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Obviously, the right to a fair trial, considers unconditionally, freely apply to the court (Rome, 1950).

Despite the importance of the right of access to a court, it is impossible to spread it infinitely. This is because one person's infinite actions might lead to chaos, and even unlimited rights will adversely affect the interests of other persons. This judgment explains the Civil Procedure Code provision series, which is aimed at restricting a person's right of court access, in the case of the existence of the specific factual and legal prerequisites.

One of such mechanisms is to leave party's filed claim (weather it is appeal, cassation or private complaints) unexamined. There are several reasons for setting up a procedural means. Therefore, this study refers to the person's complaint not being reviewed because the author of such complaint is not a subject of appeal.

Materials and Methods

This study is carried out based on the analysis of the scientific literature of the judgment, court practice, and by demonstrating a visible example.

It is recommended that research should be carried out on the subject of scientific research in the following methods: general research methods and notably the dialectical method, which are seen to be an interconnected phenomena and the developing of historical event. The general scientific methods, a logical method, includes: analysis, synthesis, induction, deduction, analogy, abstraction, modeling, etc. Consequently, other methods include the historical method (the research of its object is taking place in the process of its development), Structural-functional method (the research is undertaken by merging elements of the object and assessing the characteristics of their interaction), Systematic method (object to be treated as engaged in the system), and Complex method of study (not only explores the major problem, but also other related issues).

Body of an Instrument

Thus, the claim for dismissal and limiting the right of access to the legal grounds may include a case where a person wishing to appeal a court decision or judgment does not belong to the circle of people with the right of appeal. Accordingly, the agenda is the determination of persons whom the law allows to appeal the court decision.

Therefore, the regulation of the Civil Procedure Code is used for the determination of the persons, who are appealing against the decision of the court of appeal, cassation or private entities authorized to consider the appeal.

Civil Procedure Code, Article 364, regarded the abovementioned issue and it states that the decision made by the First Instance Court can be claimed by the parties and the third persons with the independent claim requests at the Court of Appeal by the parties within the timeframe established by law. The contents of the first part of Article 391 have the same meaning. The decisions of the Court of Appeal can be claimed at the Court of Cassation by the parties and the third persons with the independent claim within the timeframe established by law.

It should be the question of who is considered to be among the above-mentioned persons.

First of all, these individuals are named among the parties. In the scientific literature, we encounter the view that civil procedural law, however, often uses "party" concept, but does not define the content of this notion. Leading procedural law specialist make conclusions in order to determine whether the parties to the civil proceedings are named the persons

in whose name the case and the dispute between the civil rights of the court must decide (Khustali et al., 2004, 132-133).

In other words, the parties are: 1. The plaintiff, on the basis of whose claim starts the proceedings; 2. the defendant, the person against whom is the claim.

The legislature explicitly grants the right to appeal to the third parties as well, which has presented an independent claim within the current dispute between the plaintiff and the defendant.

In the scientific literature, we encounter the concept of a third party. This refers to a person who enters and has already begun the process between the parties with his/her own rights and interests (Khustali et al., 2004, 151)

The independent claims of third parties confirmed their interest in the dispute submitted by a specific request, the request factual and legal grounds. The third party is going through all the necessary procedural steps, which is defined for the plaintiff, in particular such as they pays the state tax, they are obliged to follow suit for drafting statutory form, they indicate the specific grounds, etc. Accordingly, the appeal is guaranteed for him.

Based on this research, the topic raised in the case law, about whether the court has the right to appeal the decision to a third party without any independent request, is very interesting. In scientific literature, we found different opinions about the issue. Scientists believe that only the status of a third party, if it is not involved in the dispute to independent request, does not provide such a right. The basis for this conclusion is set in the Civil Procedure Code Articles 364, 391, and 414 (Khustali et al., 2004, 165).

Besides, scientists believe that third persons without independent demand have the same procedural rights, which are necessary to defend their interests. They have the same rights as the parties, but these rights originated from disposition principle. Third persons cannot appeal court decision (Liluashvili, 2005, 137).

By contrast, we found the statement that the circle of subjects who has the right of appeal and the cassation were not provided by only two (364 and 391 Article of the Civil law) clauses as it is determined at the Supreme Court's practice, but under Article 91 and Article 83 of Civil Procedure Code as well (Qurdadze, 2005, 17).

Considering the reasoning grounded evaluation, it should be noted that the Civil Procedure Code Article 91, according to third parties who do not claim independent demands of the disputed issue, enjoy the procedural rights and they bear the procedural obligations. This, therefore, is in addition to the right to increase or reduce the claim amount, a statement of reasons or to change the subject, to recognize the claim, reject the claim or settle the dispute, to file counter-claim, and the court's decision to require compulsory

enforcement. From 83 articles, parties have the same procedural rights...they can appeal the court decision (Code of Civil Procedure, 1997).

Legal analysis of the content mentioned above makes clear that the legislature were granted to third parties without any independent request of the same rights. This is used by the parties, except those rights which are regulated in Article 91. In interpreting this issue, it can be assumed to be the right to appeal the court's decision to ban the absence of such a procedure, and the right side of the legislator to grant approval and permission from third parties so as to enable them to freely appeal against the decision. However, the full understanding of the Civil Procedure Law makes it clear that article 91 of the prohibitions set for the requirement for the third parties without independent request is not exhaustive. As mentioned above, the law allocates special regulation to determine the authorized persons to claim court's decision (Article 364, Article 391, and Article 414 of the Code). In addition, the third parties with independent request are not allowed.

As a result, the legal difficulties arise and it is contrary to the civil procedure law of the provisions set in the scientific literature. This law states that the third persons with an independent claim gain an automatic right to appeal under Article 91 and Article 83 of the Code.

Interest do not deprived the experience of foreign countries regarding the determination of the circle of persons having the right to appeal.

While speaking about the German Federal Republic, it must be noted that the German Civil Procedure Law provides three types of appeals of the court decisions. These include: an appeal, revision (§§ 544-566a), and complaint (§§ 567-577a). Appeal may be submitted to the final decisions of first instance courts (Amtsgericht, Landgericht), while the revision may be submitted to the appeal of the Supreme Courts of Appeal decisions on the land. As for the complaint and the claim, they can be filed based on the court orders and decisions (Authors collective, 2008, 324).

It also allowed the revision of the first instance court's final decision. However, this might be appealed by the appellate rule without consent if: a) The opposing party agrees, the decision to be appealed to the appellate court to bypass; b) The Revision Court allows for direct revision (Code of Civil Procedure, 1997, 176).

It is noteworthy that the Appeal and the Revision can be submitted by: a) persons who according to the appealed decision were part of the parties at first instance; b) persons who were not involved in the case by the court as third parties; c) persons who were co-participants in the civil case; d) third parties as provided by law (Authors collective, 2008, 338).

Over the years, the essence of the concept of the regulation - "the resolution of a claim filed by the parties" has led German processionalists to

the dispute. The difficulty was to determine the criteria in practice, whereby the plaintiff or defendant could submit a complaint to the court. To solve the problem, the Federal Court explained that the party may have the option of legal protection only if the act of the Court is negative concerning its legitimate rights (Authors collective, 2008, 325; The decision of German Federal Court, 1955).

It should be noted by the opinion of German processionalists that the decisions of the court of appeal should not only be acceptable (as discussed in the previous paragraph, the determination of the appeal of the subjects of the slot), but reasonable. German processionalists agreed that the reasoning of the court's appeal is justified and it depends on the accuracy or inaccuracy of the Court Act itself. In other words, the more faults a contested court decision has, the more justified the appeal file is (The decision of the Supreme Court of Georgia №as-1235-1085-10. 190; Bauer Grunsky, 1994, 190).

Also, it is noteworthy that American civil procedural law provides the opportunity to appeal to those persons whose right to appeal the court's decision is not defined by law. Such an appeal is called permission to appeal (appeal by permission). In such case, the person willing to appeal the court decision should apply to the court with the written request and submit his claims to the court decision. The issue of the acceptance of this kind of application is the matter of the courts' discussion (Authors collective, 2008, 475-476).

Thus, it is clear that spreading the right to appeal the court's decision is not only to direct parties, but to also direct the other interested persons which is not new to the foreign law.

For full execution of this research, it is very important to examine the practices. Also, court proceedings arose from the need to circle of persons who have the authority to appeal the court decision. Court practice has revealed a flaw in the legislation, and judicial law tried to answer the questions that are raised concerning the determination of the appeal of the subjects.

According to the prevailing view, the legislature attempts to regulate certain relations which concerned the legislator in that concrete moment. Only practice can later show how this or that norm worked out. In addition, laws-regulated relations are changing too.

However, the legislator cannot change the law in an instant, which, in turn, gives rise to practical requirement for the law to be brought in line with the new circumstances. This problem raises the practical question of how to fill the gaps in the law in order to enable the court to settle the dispute. In this situation, the simplest solution would be to declare the legal

dispute unsolvable. However, such a situation is fairly valued as justice bankrupt (Chanturia & Papuashvili, 2003, 1-2)

The Civil Code of Georgia, as well as the French Civil Code, does not provide the judge with this type of decision-making right. To avoid bankruptcy of the court, the judge must have the right by way of explaining the use of the law in all cases. According to the Article 4 of the French Civil Code, judges are obliged even to act so. Hence, there is a similar provision in the Georgian Civil Code (Civil code of France).

When the law goes beyond the grammatical interpretation and changes into the interpretation of the definition, practice is dealing with the emergence of a new norm which, in fact, is the making process (Chanturia & Papuashvili, 2003, 1-2).

In some judicial procedures and the elimination of mistakes during the general performance of the production of the introduction of the model which the civil procedural law offers, special role is given to the appellate courts (Liluashvili, 2002, 172).

In the present case, practice of the Supreme Court of Georgia is aimed widely at interpreting the circle of subjects appealing against court decision. Thus, this goes beyond the direct procedure laid down in the Civil Procedure Code.

In the court practice, we meet the classification of persons willing to appeal the court's decision and persons who do not belong to the circle defined by the law. They include: 1. The persons whose interests are directly related to the contested decision; 2. The persons to whom such a judgment result does not lead to worth protecting interest.

The Court of Cassation in one of its judgments explains that from the legal analysis of the Code of Civil Procedure Article 364, it turns out that the legislator defines the circle of authorized persons to appeal and the opportunity for the persons whose legal interests are directly related to the contested decision. In addition, if the decision of the court was referred to the rights of a person, who was not involved in the case as plaintiff, defendant or accomplice, or a third party with an independent request and complaint, such person has the right to appeal the decision.

In the present case, the appellant T. B. was involved in the dispute as the third party. However, she has not applied the court with an independent claim and has neither asked anyone to be engaged as the third party. It should be noted that T.B. had complaints towards S.B - not towards the bank. Appellant explained that B. had illegally loaded a share of the common property without the consent of the owner of the mortgage.

Thus, the Cassation Court shares the reasoning of the Court of Appeal that T. B. is not the subject of the above mentioned provision and there is no applicable authority to appeal the District Court's decision.

Decision of the Appeal court cannot be cancelled because of the private Complainant's indication that T.B is registered as co-owner of disputable property; this is because she could not prove it by taking public registry extract according to the Civil Procedure Code, Article 407, Paragraph 1 (ScG №as-1235-1085-10 of 13.01.2011).

In another case, Cassation Court gave the explanation that according to the Code of Civil Procedure Article 401, the court decides the issue of the adoption of the cassation complaint in ten days, and among other things sets if the cassation appeal is filed by the authorized person.

Code of Civil Procedure Article 391 establishes an imperative part of the circle of persons who are entitled to make a cassation appeal of the judgment of the Court of Appeal. According to the norm, the decision of the Court of Appeal can be appealed by parties and third persons. In addition, the court's decision could also be appealed by the people, whose rights and duties are determined by a court decision in a way that they were not invited to the hearing.

In this case, it is established that O.A applied the Court of Appeal and has requested that the Ministry of Finance and Revenue Service and Inspection Service of the Ministry of Finance should be involved as the independent third party without requirement. Therefore, this was upheld by the ruling of June 23, 2008, of the Court. Also, the Administrative bodies were involved in the dispute as third parties without independent demand.

Thus, the Ministry of Finance is a third party without an independent request. In accordance with the Civil Procedure Code, Article 391, it takes only an unauthorized person to make a cassation appeal.

Herewith, the cassation appeal of the third party with such legal status is allowed if the appealed decision directly violates its interests. In this case, the Ministry of Finance could not indicate what impact the ruling of the Supreme Court Chamber of Civil Cases of 10 September 2008 has on its interests. As for the appellant in cassation, the creditor's right is to use the disputed property as a means that is clearly regulated by law (Civil Code 286-310 of the Code) and the Convention on the Rights of bona fide interests [ScGd 28.03.2009 as-253-578-09].

Reviewing one of the civil cases, the Supreme Court of Georgia noted that V.K is not a party or a third party with an independent request in the case of LTD 'D' against the business registry of Isani-Samgori district court. It should be noted that the appealed judgment of the District Court is not against V.K.'s legitimate interests and there is no prejudice.

Thus, it is quite justified by the Court of Appeal's judgement- V.K was not the authorized person to appeal, and his appeal was dismissed correctly [ScGd 16.07.2007 as- 364-715-2007].

Within the individual claim the Court of Cassation assessed, any person who were not involved as parties to the dispute had the authority to appeal the first instance's decision.

The court of Cassation thought that in this case, it should be established whether the first instance court's decision's stated legal outcome will have a significant influence on the rights and interests of appellants.

The Appeal court noted that the appellants are individuals whose real estate was loaded with mortgage loan to ensure plaintiff's liability.

Within the framework of the dispute was discussed the issue whether the note of notary written execution should be canceled or not, which the plaintiff was obliged to pay in favor of the defendant. As a result, the real estate owned by the appellants was presented for sale. The subject of the court dispute is to determine the amount of money which the plaintiff must pay to the defendant and to cover what amount of money the mortgage property should be sold.

Furthermore, the Cassation Chamber admitted that the decision made by the first instance court was in straight connection of appellants' interests. Thus, the decision of Cassation chamber about leaving the cassation appeal without consideration is unlawful and the Appellate Chamber misinterpreted the decision of the Supreme Court [N AS-364-715-07]. Based on this decision, the case when the appealed court decision has nothing common with the rights of appellants was discussed. This is determined by the assessment of the particular circumstances.

Accordingly, the Court of Cassation upheld the private complainant's claim that the Appeals Chamber had to determine how a particular case contested decision that infringed the legitimate interests of the appellant and only after that should decision be taken regarding the admissibility of the appeal.

The Court of Cassation in case Nas-934-899-2016 points out that G.M. in this dispute does not constitute a cassation entity, or a person who is authorized to file a cassation complaint in relation to the dispute. The Cassation Chamber took into consideration the established practice in early decisions of the Supreme Court on such issues (See Decisions of the Supreme Court of Georgia: Nas-705-1078-06, November 22, 2006; Nas-253-578-09, March 28, 2009; Nas-364-715-07, July 16, 2007).

Also, the Court of Cassation in case Nas-1075-1033-2016 clarifies that the object of the Appeal can be the decision of the first instance court only in the case the decision is against the applicant. The appellant's complaint must aim to achieve a concrete legal outcome and the outcome

should be beneficial and useful in case of its complaints [№as-934-899-2016 of 14.02.2017].

Results

In summing up the results of the survey, it should be noted that the right to appeal the court's decision, despite the persons stated by the law, also have such persons whose legal rights and interests in the resolution of the legal issues directly affect the result.

It is worthy to note that obtaining the right to appeal is not related to the involvement of person as the third party without independent claim. Also, it is caused by only the objective necessity that does not jeopardize the right of access to the court and that enables all the interested parties, which otherwise cannot defend themselves against the decision, to stand their rights.

The practice of the Supreme Court of Georgia is directed to remedying the defect mentioned in the research section of this study. From the reasoning of Chamber of Cassation, it follows that, as noted above, to have the right of appealing also requires such third persons who are not parties to the case or a third party with an independent request. Consequently, they are not involved, but the operative part of the decision has a direct effect on their legitimate interests.

The reasoning is not only based on the conclusions of the judicial law, but also on the provisions of Civil Procedure Code, Article 414, Part II. By virtue of the provision, the private appeal can be filed not only by the parties to which the ruling is passed, but also to those persons who are directly affected by this ruling (Code of Civil Procedure, 1997).

The contents of the article make clear the aim of the legislator- the person. The person finds out that the court has considered the dispute and the result has a negative effect on their right. Therefore, they shall not remain beyond the right of the court accessibility.

The research part of this work confirms that foreign procedural law is oriented to defend the rights of these persons. The foreign legislation states the procedure and the chance for consideration for those persons who are unforeseen by the law to appeal.

Obviously, all of the above mentioned should not be construed in such a way that any person subjectively interested in resolving the dispute is given the opportunity to intervene in the proceedings, where he/she does not have a status of party. The interest of person must be confirmed by the relevant factual and legal preconditions.

At the end, it is noteworthy that the assumption mentioned at the beginning of the study was confirmed. The assumption is related to the

accuracy and the clarification of the legislative provisions, which determine the circle of persons who have the right to appeal.

To overcome this problem, it is recommended to make the legislative changes in the article 364 and article 391 of the Civil Procedural Code, just like article 414 of the same code-among the persons authorized to appeal the court decision. The provision should be added "as well as to those persons, who are directly affected by this ruling". Through this way, the legislator would avoid unjustified restriction of the court access right of interested persons.

As for the court practice, it focuses on the consideration of the wishes of the person with interest as well as the evaluation of the factual and legal context while giving the person right to appeal the court decision.

Conclusion

In conclusion, correct determination of the circle of persons who are authorized to appeal is the most important issue for the legislator, as well as to the court. The quality of implementation of the mentioned issue determines how the most important right, the access to the court, will be secured.

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