HISTORICAL REVIEW OF THE INSTITUTE OF APPEAL AND ITS DEVELOPMENT CHARACTERISTICS

Nino Tsikhiseli, PhD Student
Grigol Robakidze University, Tbilisi, Georgia

Abstract

The presented work - "Historical Review of the Institute of Appeal and Its Development Characteristics" concerns the Appeal and its legal nature. The work is about the historical development and the establishment of appeal in various countries. In the work the following issues are defined: essence of Appeal, notion of Appeal and complete (unlimited) and incomplete (limited) types of Appeal.

Keywords: Court, Appellate, Trial, Judge

Introduction

"Appeal" is a Latin word which means to request a formal change to an official decision. In the Civil Procedure Law, it means to ask a higher court to reverse the decision of a trial court. Appellate court is the court of the second instance which is empowered to review decisions of lower courts. It means that it does not only check those decisions in terms of how legal they are but also in essence researches those circumstances which were not examined by trial court or were given a wrong assessment (A. Kobakhidze, 2003).

The Article 364 of the Code of the Civil Procedure stipulates: "Parties and the third parties may appeal the decision of the trial court based on independent appeal request in the prescribed time in the Court of Appeals"; also, according to the Article 366, paragraph 2, an unattended decision is a subject to appeal if it was made during repeated absence. That is why it cannot be appealed in the same court. Such a decision may be appealed in the Appellate court only on the grounds that there were no appropriate legal preconditions for it (Georgian Civil Procedure Code, 2015).

The current Civil Code strictly specifies the rules of appealing court decision in the Appellate court; however, its development history is rather interesting.

Rome

Even at an early stage of development of the state, court represented a free and independent public-civic institution and it conditioned the fact that the court decision was final and was not a subject to appeal. Over time, with the strengthening of the government, judiciary system developed and therefore, it became possible to check the court decisions by central authorities. At this early stage of development, there was no court of appeals and the issue of reversing or amending the court decision was discussed in the original decision-making court (A. Kobakhidze, 2003).

In the early period of the development of the Roman state, central state authority development stage, there was no such institute of appealing court decisions. During the first half of the Roman Republic, there were two stages for law-making for Roman citizens: the process "in jure" and the process "in juducio". The process "in jure" involved the parties and court magister. It should be noted that the latter had no function and his duties were limited to attending the festive ceremony arranged by the parties and making a replication what was

foreseen in the ritual. In this case, major activities were carried out by a plaintiff and a defendant; a plaintiff delivered his/her request and a defendant could have either accepted or refused this request. If a defendant did not recognize a claimant's claims, the case was transferred from "in jure" to "in juducio" stage which included determining the actual truth of provided factual evidence. This was carried out by the judges selected by the parties themselves from the list of senators. The latter's decision was final and was not a subject to further appeal" (G. Kiria, 2002).

The stages of the above-mentioned proceeding were slowly modified; they lost their original function. Firstly, in Rome there was established such a legal process that the court decision, no matter if it was fair or not, was not a subject of appeal. At this stage, the court of appeal had been encountered in the first experiments which were aimed at changing the original decision (on appeal). Obviously, the above-mentioned institute's purpose was to refer the case back to the initial stage; however, it should be mentioned that such appeal was only possible in certain circumstances; for example, if it was established that there had been violence and threats on judges, which was eventually reflected in the decision, as well as bribing the judge, or failure to appear on the process. All of these cases could result in the court to repeal a new trial. Nevertheless, at this stage of development there still were not other instances of courts. Later, when the judicial and administrative functions were united under one administrative body – magistrate, it became possible to appeal court decision in higher instances which might have even included the Emperor in the process. Exactly this kind of intervention was called "appeal" (appellatio).

From the above-mentioned it can be concluded that the institution of appeal was formed in civil proceedings at the end of III century A.D. (G. Kiria, 2002). Later, during the reign of Diocletian and Constantine, appeal proceedings gained the organized form, while during the reign of Justinian, appeal as the form of the legal form finally established its place in legal system. Hereby, the specific time period was determined for making an appeal application and sending it to the court. It should be noted that the parties could orally appeal the decision straight after it was made or in writing within 10 days.

The appeal of the court's decision stopped it from being executed which indicates a high development of the Roman legal system. By this time, the appeal procedure changed itself. If the Emperor used to take a decision only based on the written explanation of the interested parties and the judge, during the reign of Justinian, a completely new process was formed according to which the parties could submit additional evidence and make an examination of their trial which was the so-called Full appeal.

Existence of the appeals system led to some complications as well. In particular, the court procedure became slower and more expensive due to the introduction of court fees. However, the appeal was one of the most important achievements of the Institutional Law of Rome which ensured its role and place in the history of jurisprudence.

France

In France, as well as in Georgia, the Court of Appeals is placed under the general court system and was established in 1804 for the revision of the appeal cases. Appellate review of the case is going on from the legal as well factual point of view (New Civil Procedural code of France).

In France, the notion of appeal appeared at the end of XIII century but for a long time the appeal was a complaint to the judge, not the decision. Therefore, the judge defended his decision with weapon in his hand, but later, in XVII century, in 1667, the appearance of ordonnance turned the appeal action against the decision rather than the judge. After many attempts, French Civil Procedure Code was adopted in 1806 and entered into force on January 1, 1807. Based on it, several types of court appeals became established in France,

such as appeal and cassation. The Principles of the above-mentioned Code for appeal and cassation were also considered in France's new, 1976 Code of Civil Procedure" (G. Kiria, 2002).

England

Compared to France, Roman law had a less effect on the development of England's national law. As it had no practical value, Roman law, to some extent, affected the English legal thinking. Roman law introduced England to legal terms, the legal definitions, and a number of general concepts of Roman law.

In English legal system, appeal was established as an institute. In its essence, it was different from the appeal of the continent. English rule considered appeal on the matters of law and the matters were based on facts. The latter method considered revising the verdict of the jury who determined the facts of the case. In England, this peculiar system of appealing the court's decisions the so-called characteristic of "the English Institute" still remains." (G. Kiria, 2002).

United States

In the United States, the court has the following sequence:

1. The Supreme Court
2. The Court of Appeal
3. The District Court
4. Special Court’s jurisdiction

The United States does not have a constitutional court. The Constitutional Control is carried out by every court; however, the Supreme Court makes the final decision.

Forming and abolishing courts in the United States is a prerogative of the Congress. The number of judges in the Supreme Court is 8 and the President appoints them in agreement with the Senate.

Sweden

In Sweden, the Supreme Court leads a system of common courts. The Supreme Court consists of 22 judges, of the High Court of Sweden made up of three sections. The Supreme Court’s main function is to receive and deal with the appeal of the rulings and decisions made by the court of appeals.

Sweden has six courts of appeal based on territorial jurisdiction. They are divided into departments and are their heads are called lay judges or laymen.

Swedish court of appeals re-considers the rulings and decisions of the lower courts, with the participation of 4-5 judges.

In Sweden, there is no special constitutional court and based on this, the courts of general jurisdiction often fulfill this function; they are also assessing constitution of court cases.

Great Britain

The UK’s judiciary system is described below and at the head of it stands: Supreme Court; Royal Court; Court of Appeal. The High Court consists of three sections - the throne, the Chancellor and Family Affairs. Number of the Supreme Court judges is 78. They hear the first instance cases, as well as appeal.

Royal Court can consider serious criminal cases. Appeal of Royal Courts decisions takes place in the House of Lords Court which is headed by Lord Chancellor and is composed of 18 judges.

Lower courts are the County Courts which consider civil cases. The price of the above-mentioned costs should not exceed 5000 pounds, while if the value is even less, such cases might be considered by the County Court judge's assistant. Less significant criminal cases are dealt with in magistrates' courts.

In the UK, there are "tribunals" which may consider administrative cases. Senior judges are appointed by the monarch, lower judges - by the Lord Chancellor. A judge is appointed for life until the age of 72 and can only be dismissed by the Lord Chancellor if they commit an illegal act.

As to the Constitutional Court, it is not in the UK. The competence for development of decision-making is attributed to: the High Court of Justice, the Court of Appeal and House of Lords which has the right to review a case"(Kh. Khokh. U. Magnus. P., 2001).

Appeal is a new legal institution which was not a characteristic of the Soviet legal concept. In the early development of European cultural people states, court represented an institution of holy people. It enjoyed full independence as initially the government did not exist at all, and even afterwards it was so weak that could not subordinate and operate the courts. Later, the gradual development of a centralized state power and the strengthening of public institutions already demanded control of public institutions, and the court began to gradually lose independence. This led to the origin of the rights of members of society who could file a complaint against the court or governmental bodies and apply to the government with it. In this stage of state development, the method of appeal was unknown, while current rules made it possible to amend or revoke the decision only by the decision-making court itself. The origin of method of appeal was possible only if the central government was strong enough to place control and hierarchically subordinate the public court or at least change it will its own institution. These general provisions find proof in the old Roman and European people’s history of state and law development (G. Kiria, 2002).

Examination of appeal institution is not possible unless it signs and concepts are defined. According to the Georgian Civil Procedure Code, the aim of appeal is to re-solve the case i.e. revising the case again, either wholly or partially (Sh. Kurdadze, N. Khunashvili, 2012). The appeal involves reviewing the decision made by the trial, re-examination of those requests which were the subject of the discussion at the first instance. Reviewing new demands in the court of appeal after trial court is unacceptable. New requirements may only be the subject to the discussion by the first instance (Sh. Kurdadze, N. Khunashvili, 2012).

According to the contents, appeal can be divided into two types: full (unlimited) and incomplete (limited) appeal.

Full or unlimited appeal – it is such an appeal, according to which the following might be checked: materials of the case, the facts, the evidence, the legality of the decision and whether the proceedings are in accordance with legal standards which define the legal rules. In addition, the parties can submit new facts of the case and the evidence which was not presented in the first instance (4).

Therefore, in the case of full appeal, the court re-considers the case again and does not return to the first instance court for re-examination.

Limited appeal represents a review of the decision taken by a lower court based on the factual basis submitted in the Court of the First Instance by the parties. Based on the general rule of limited appeal, no new references general rule of appeal at the Court of facts and evidence at trial of a new reference of facts and evidence is permitted; however, citing certain conditions or circumstances is allowed. Thus, in the case of limited appeal, the Court of Appeal usually reviews the case based on the current evidence which had already been considered by the court of the first instance (i.e., was examined the Court of the First Instance).

In case of incomplete appeal, the appeal court has the right to return the case to the trial court for reviewing and re-considering the decision (Sh. Kurdadze, N. Khunashvili, 2012).

The Georgian civil procedural law gave advantage to limited appeal between these two. This type is widespread in France and Italy.

As for submitting new facts and evidence in the court of appeal, according to the Georgian Civil Procedure Code: "New facts and new evidence may be presented at the court of appeal. The Appeals court will not accept those new facts and evidence which could have been submitted to the Court of First Instance, but were not without any good reasoning".

Therefore, the Code of Civil Procedure does not prohibit the parties of the new evidence submitted and the new facts to bring in the Court of Appeal, but the two sides have been said they could if they had the facts and evidence presented to the trial court, and a good reason, whether they submit the first-instance court.

It also treats respectively traditions of some countries which involve unlimited right to appeal a case in the second instance. The Consultative Council of European Judges expresses its own attitude towards the fact that it does not approve such approach. There must be some limits for all parties to present new evidence or new issues of law. The appeal should not be treated as an unlimited opportunity for filing amendments to the factual and legal issues, which could and should be submitted by the parties in the first instance. This diminishes the role of the judge of the first instance and in fact could potentially lead to emphasizing the unsuitability of the judge in the case management.

Conclusion

Thus, we can conclude that generally ancient Rome laws have a special role in shaping and development of the legal space. The legal system was quite highly developed there and with time it was modified so that eventually it became the basis of almost all countries. The first historical evidence of the emergence of appeal can be found in the ancient Rome laws.

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