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(*) Corresponding author

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APPEAL TO THE SUPREME COURT: COMPARATIVE ANALYSIS IN THE JUDICIAL SYSTEMS OF ALBANIA, KOSOVO AND NORTH MACEDONIA

Ana Pjetri^{1*}

ORCID ID: 0009-0006-1675-2006, ap32357@seeu.edu.mk

¹South East European University, Faculty of Law - Tetovo, North Macedonia

Abstract

As essential components of the rule of law, the rights to due process and legal certainty play a key role in guaranteeing justice. This study aims to analyze the function, importance and role of recourse to the Supreme Court as a legal tool. The research problem addressed is to what extent recourse fulfills its function in protecting the rights of individuals, unifying judicial practice and strengthening legal certainty. The objectives of the study include analyzing the legal framework governing recourse, examining judicial practice, and identifying implementation gaps. A doctrinal research approach was used through the analysis of laws, court decisions and scientific literature. The findings show that although recourse offers a higher level of judicial protection, it is often hampered by a selective approach, procedural delays and inconsistencies in the interpretation of the law. The study concludes that, to guarantee a functional, efficient and reliable judicial system, it is necessary to strengthen the role of the Supreme Court and to improve procedural legislation, thereby making recourse an essential instrument for the protection of fundamental human rights.

Keywords: *Judicial System; Legitimization; Procedural Deadlines; Juridical Review*

INTRODUCTION

One of the important tasks of law enforcement is to discover the meaning of positive law and to fill its gaps, some more than others. Schools of law emphasize that the law is often unjust and that the judge, as an interpreter of society's meaning of the law, must fill in the gaps and inaccuracies. Suppose we base ourselves on history, philosophy and custom. In that case, we see that the force of social justice finds its realization in the sociological method, where the ultimate goal of law is the well-being of society. The sociological method, in filling the gaps, emphasizes

social well-being. This broad term reinforces the social benefit of respecting the standards of proper behavior, as expressed in society's way of life. Courts “have often erred in judging the validity of a law, not because of a wrong understanding of the law but because of the facts, which have led to a restriction of the rights of the individual, which have constitutional immunity” (Cardozo 2006, 50).

The courts are free to set the limits of individual guarantees to formulate their decisions in accordance with reason and justice. Because they judge the validity of laws, they are free to put their ideas into effect, but must have an objective standard. The court, as the subject of the legal-procedural relationship, plays an important role because it is the only subject authorized to resolve a civil matter with a final decision or to interpret the law in cases involving remedies such as recourse to the High Court (Cardozo 2006, 63). The right to an effective remedy and the right of access to court for the protection and restoration of legal and constitutional rights constitute a cause of action for non-violation of the constitutional principle “the right to appeal at all levels of the judiciary.” Viewed in a theoretical and practical context, the Supreme Court is the result of an evolution over the centuries, originating from the Court of Cassation with the sole duty to overturn decisions given in violation of the law or in violation of the norms of the judicial process that provide for its invalidity and without having the right or access to examine disputes from a factual point of view. The role of the Supreme Court as a “Court of Cassation,” which has its origins in France, is provided for by Article 141 of the Constitution, which stipulates that the Supreme Court examines issues related to the meaning and application of the law to ensure the unification or development of judicial practice, according to the law. That is, the annulment of a judicial decision by a legal remedy. The Supreme Court examines and analyzes the law and the circumstances of the case only to the extent necessary for it to interpret the law, without making a new examination of the facts and evidence. According to Euralius, “the function of the Supreme Court today is to check whether the law has been interpreted and applied correctly by the lower courts, whose decision is challenged” (Euralius 2021).

According to Brati, “the positions of the Supreme Court in accordance with the doctrine also contribute to the interpretation of the law that the Courts must follow and apply in the numerous cases due to the judgments that come (Brati 2008, 467). Referring to this position, I think that one of the many problems before the Civil Procedure Code of the Republic of Albania (amended in 2023) came into force and which brought a large volume of appeals to the Supreme Court lay in the dilemma of whether all the decisions of the courts of appeal related to the value of the dispute subject to judgment constitute a recourse or should a limit be set on the value of the claims for judgment.

In many different countries, there is such an opportunity to select the types of cases for which recourse is made to the Supreme Court, based on the value of the object of the dispute and the consent given by the courts of appeal to the request of one of the litigants.

Today in Germany, as in France, the number of cases subject to recourse can be more easily identified due to the existence of systemic filtering mechanisms. Unlike common law systems, where higher court decisions are binding precedents for similar future cases, the authority of Supreme Court decisions in these systems differs. Generally, the Supreme Court reviews decisions of the Court of Appeal through recourse, addressing issues of particular importance. Such decisions play a significant role not only in resolving individual cases but also in guiding and improving the quality of decision-making in lower courts.

LITERATURE REVIEW

The role of the extraordinary appeal to the Supreme Court has been the subject of legal doctrine, especially in countries with an established tradition of continental law. Various studies in the international literature have treated recourse as an instrument for ensuring legality, unifying jurisprudence, and guaranteeing legal certainty. The appeal “does not aim at re-evaluating the facts but only the law and procedure, positioning the High Court as the guarantor of the same application of the law at the national level” (Cappeletti 1972, 50).

However, what is missing from the literature is an in-depth comparative analysis among the Balkan countries on how recourse works, where there is a gap in the comparative treatment of issues such as the difference in the conditions and effects of recourse between states, the real powers to accept or reject recourse, and the uncertainty created by the lack of unified practice.

The institution of recourse is one of the most important means of controlling and correcting judicial decisions, guaranteeing respect for the law and the rights of the parties. In international legal literature, recourse has been treated as a mechanism that maintains the balance between two essential principles: the need to conclude the judicial case and the right to a fair process of law. Among extraordinary remedies, an appeal to the Supreme Court has a special position in ensuring uniformity of judicial practice and correcting possible errors that may occur in lower courts. The effectiveness of the appeals process depends to a large extent on a clear procedural framework, including criteria for admissibility, deadlines and scope of review. Other comparative legal systems, such as those of France and Germany, serve as a filtering mechanism and provide valuable models for the structured use of appeal. These systems emphasize the importance of selectivity and the development of doctrine by the higher courts. This comparative context helps in understanding recourse as a mechanism for guaranteeing the rule of law and the procedural rights of the individual. In this sense, the study of recourse is not simply a technical analysis of a procedural norm, but a combination of legal theory and judicial practice. This paper aims to fill this gap by comparatively analyzing these countries, although similar in principle, but differing in the way they are implemented in terms of the level of protection against errors in law. An analytical-descriptive approach has also been followed, describing developments in each system and interpreting the functions that ensure legal certainty.

METHODOLOGY

The research in this paper has been carried out by emphasizing the doctrinal and comparative analysis of the institute of recourse in the Supreme Court. Since recourse is a legal mechanism with a specific function in the justice system, this methodology explains its role, limitations, and importance in guaranteeing fundamental human rights.

The study is based on the analysis of sources, including:

1. Legislation of the Republic of Albania, the Republic of Kosovo and the Republic of North Macedonia. The selection of these three countries for the analysis was based on their shared geopolitical and legal space, a similar judicial system, and alignment with European Union standards.
2. Jurisprudence of the Supreme Court with a focus on decisions related to the application and interpretation of the recourse;
3. International acts related to the right to appeal and due process.

The comparative method was used to assess the legal basis and formal regulation of the recourse, the conditions and deadlines for exercising it, and its effects on the execution of the decision.

Research Objectives

This research aims to provide a comprehensive understanding of the appeal mechanism before the Supreme Court by exploring its legal nature, practical implementation, historical development, and impact on judicial practice.

1. To examine the nature and legal function of appeals before the Supreme Court, with a focus on their role across different legal systems.
2. To identify challenges related to the practical implementation of appeals, including the scope of review, party legitimacy, and issues concerning deadlines and procedural requirements.
3. To assess the impact of appeals in safeguarding individuals' constitutional right to a fair judicial process.
4. To analyze the historical development of the appeal mechanism, including recent reforms that influence its functioning.
5. To examine judicial practice in the application of appeals and determine whether Supreme Court decisions contribute to the unification of legal practice.

LEGITIMIZATION OF THE PARTIES TO FILE A RECOURSE

Appeals are legal means of access to exercise the protection of subjective rights, which means that the subject must make a subjective civil right or a personal interest protected by law legitimate in the recourse, otherwise the recourse cannot be accepted in the trial as exercised by a subject that does not have legitimacy, based on Article 450 of the Code of Civil Procedure “the rejection of a complaint occurs when the complaint is filed by a person who is not authorized to file a complaint” (CPC AL 2014). As a principle, those who were parties to the trial in which the court decision was rendered and who resulted in the loss of the trial are entitled and have an interest in exercising recourse to the Supreme Court. The prosecutor is also entitled to participate if he has participated in the trial and his participation is foreseen by law.

The definition of the notion of party is given in Article 90/1 of the Code of Civil Procedure, which specifies that “Parties in civil proceedings are natural or legal persons in the name of or against whom the proceedings are conducted” (CPC AL 2014). The parties in a civil proceeding constitute the basis for the procedural relationship, as they are the ones who present, defend, and exercise their rights before the court. Through their procedural actions and inactions, the parties influence the course of the proceeding and the legal consequences it produces, enabling the court to exercise its function of resolving civil disputes lawfully. Parties are subjects of civil procedural legal relations because,

without them, we would not have a civil process. Parties and other subjects who participate to protect their interests perform procedural actions in order for the court to resolve disputes between them. The performance or non-performance of their actions leads to procedural consequences such as dismissal of the lawsuit, suspension of the trial, as defined by law. Parties to a process are persons who

confront each other with the aim of achieving a favorable decision (Mandro 2007, 458-9).

In Rome, to file a lawsuit, one had to be a Roman citizen and *paterfamilias*; in addition, the parties to the trial had to be legitimate to initiate a particular process. Active legitimacy consisted of having the right to file a lawsuit in your favor. The parties could act in the process by being represented by another cognitor or *procurator*.

Cognitor was considered the person who completely replaced the plaintiff by being appointed as such before the praetor as a person with full capacity to act, whereas *procurator* was considered a general administrator, who had more power than to replace a person in a judicial process, from which Justinian law left it in force” (Mandro 2007, 463). There was also no separation of certain functions of power, so all state bodies, the senate and the magistrates, acted as judicial bodies. The consuls dealt with issues arising from the *legis actio* procedure, one of the oldest forms of action and one of the five recognized basic lawsuits. All such actions were based on strict civil law, which often created a risk that any claim or counterclaim by the defendant could be rejected.

To acquire the status of a party in a judicial process, the subject of law must have two qualities:

- Legal capacity to be a litigant. The legal capacity to be a litigant is possessed by anyone who has the capacity to acquire civil rights, that is, any living natural person or legal entity.
- The ability to act in the process. The capacity to act in a process is otherwise known as procedural capacity to act. It is possessed only by legal persons who have the capacity to exercise civil rights and to act in a civil process.

Legal capacity and procedural capacity are required to acquire party status in a judicial process. Article 32 of the CPC stipulates that a lawsuit is filed only when a person has a legitimate interest in the recognition or rejection of a claim. This clearly leads to the conclusion that a person without a legitimate interest cannot file a lawsuit/complaint. The term “legitimate interest” is defined by judicial practice, which holds that it is the personal benefit the party has in requesting, through the court, the recognition or restoration of a denied right. To be convincing in a case of violation of the plaintiff’s rights, intending to confirm his legitimacy, the normative act must result as objectively illegal, and the legal interest must be proven to be current, specific and direct for the plaintiff, also because it is linked to the fact that without the intervention of the court, the dispute will continue to exist. The party will feel threatened by the possibility of harm. “When the court concludes that the requesting party has an interest in the case, it has concluded, in this way, also about its legitimization. So, the concept of interest helps legitimize. These two concepts are in function of each other. The issue of the parties’ legitimacy in a civil process, as interpreted by the court, refers to the standard of access to the court as an element of due process. The lack of legitimacy of a subject, who must be legitimized under the law, constitutes a cause for the violation of his right to a due process of law” (CC 2008). The Code of Civil Procedure, in both the general and special parts, defines a lawsuit as the right to be heard of the person making the claim, so that the court can declare it based on facts and laws or not, while Article 32, letter “a” provides that a lawsuit may be filed to request the restoration of a right or legitimate interest that has been violated.

LIMITS OF REVIEW OF RECOURSE IN THE SUPREME COURT

As mentioned above, an appeal is the right to use procedural means to challenge a lower court's decision in a higher court. This right, as a constitutional right, is guaranteed through the exercise of recourse to the Supreme Court. The Constitution stipulates that the Supreme Court has review jurisdiction but does not explicitly set the limits of its review, leaving those limits to be determined by law. The Supreme Court, in its decision (1030/2000) on the unification of judicial practice, “specified that, regardless of the limits of the examination of cases in the Supreme Court determined by law, the party to the trial is not denied the constitutional right to exercise at least one appeal against the judicial decision in a higher court” (SC 2008).

The entire “activity of the court is nothing more than the continuous application of procedural and substantive law. Despite the guarantees ensuring the regularity of the court's work, it cannot be entirely ruled out that the court may violate the law; consequently, a decision that should represent the law for the parties may, in fact, be unlawful. (Zogaj 2019, 361). The grounds on which a rights-holder may file a recourse are defined in Article 472 of the Code of Civil Procedure, which stipulates that decisions issued by the court of appeal, as well as first-instance decisions in the cases provided for in the Code, may be challenged by recourse before the High Court:

- For the incorrect application of substantive or procedural law of fundamental importance for the calculation and development of judicial practice;
- When the appealed decision is different from the judicial practice of the Civil College;
- There are serious procedural violations, rendering the decision or the trial procedure invalid.

Hence, we conclude that the Supreme Court examines cases of procedural errors and errors of judgment, emphasizing that the reasons for exercising recourse are limited. We consider procedural errors to be the violation by the court of the norms that regulate its activity. The existence of procedural errors prevents the Supreme Court or lower courts from reviewing errors in judgment. If an error in procedure is alleged in the Supreme Court, it must first examine this claim based on the acts at its disposal and then examine whether the decision appealed in the resolution of the merits of the case is fair or not. The Supreme Court examines two types of appeals:

- Ordinary appeals, which are filed against a decision on the merits of the court of appeal.
- Special appeals filed against non-final decisions, as well as intermediate decisions of lower courts (CC 2008, 9).

Referring to the errors in the proceedings provided for in the article, in which courts exceed the limits of their judicial power, we can highlight the following causes.

Grounds Relating to Judicial Jurisdiction

One of the innovations of the legal changes has been the regulation of the Supreme Court's role in matters of jurisdiction and competence, aimed at harmonizing procedural provisions in civil law. The term jurisdiction has been used since ancient times to describe a court's power to interpret and apply the law. The Supreme Court, being the highest organ of the

judicial power, has the duty to determine the extent, if any, of its jurisdiction in specific cases of trial. The special appeal is allowed only against the non-final decision of the civil court that takes the case outside its jurisdiction, on the ground that this decision-making could potentially cause a fundamental violation of the individual's access to justice. The Constitutional Court assesses the issue of jurisdiction in relation to the right of access to court, where every individual has the right to bring a claim before a court that has full jurisdiction to resolve the matter, under Article 42 of the Constitution and Article 6 of the ECHR. It does not assess whether the interpretation of the procedural provisions relating to administrative and judicial jurisdiction is correct from a legal point of view, but rather whether it results in a violation of the right to due process.

Violation of Norms on Competence

Competence, as a term, is objectively presented as a set of actions carried out by a state body, while subjectively, it is considered a right and duty of each body to carry out a specific activity. Within the framework of judicial jurisdiction, the division of activity between different courts, as well as between courts of the same level, constitutes competence.

So we can say that competence is a procedural prerequisite for the validity of the procedure and its acts (Brati 2008, 81). The incorrect application of the law is the cause that qualifies and determines the Supreme Court's functions. An error of judgment is a court's misjudgment of the merits of a case; in this case, the court must establish the facts by reconstructing them and apply the law to them by evaluating them in accordance with the law. The application of a norm to a case other than that provided for may lead to a different interpretation of the legal norm” (Brati 2008, 472). The appeal may also be filed due to the incorrect application of substantive law or,

as it is otherwise known, errors in judgment, which are considered errors made by the court when judging the merits of the case, in cases where the legal norm that regulates its procedural activity is not respected. If, during the judgment of the merits of the case, the legal norms that regulate the legal relationship subject to judgment are not respected, the court makes an error in judgment by giving an unjust decision (LCP 03/L-006 2008).

The receipt of new evidence constitutes a reason for the Supreme Court to review the verification of facts included in judicial decisions only if the appealed judicial decision is not convincing, which means that the parties have the right to present evidence or propose new evidence only if they relate to violations of the procedural provisions during the second instance trial.

The Civil Panel of the Supreme Court clarified that the Supreme Court is a court of law, which excludes the taking of new evidence and the assessment of evidence on the merits of a claim. Consequently, it is procedurally impossible for the Supreme Court to conduct a trial in which it would be required not only to take evidence but also to investigate and assess that evidence in order to determine whether the submitted claim is legally justified (SC 2021). Such a procedure is characteristic of courts of fact, not of a supreme court.

TRIAL PROCEDURE IN THE SUPREME COURT

The Supreme Court is the highest judicial institution in the country, and its role is essential to ensuring the uniform application of the law and protecting citizens' rights. Its organizational structure and case-review procedures are designed to ensure professionalism and efficiency in judicial decision-making. As the Supreme Court itself emphasized, appeals are examined in a deliberative chamber by panels of three judges. In comparison, panels hear cases concerning the unification and evaluation of the case law of five judges. The procedure is primarily document-based; however, the parties retain the right to request expedited consideration of a case when they present serious and well-reasoned grounds (SC 2021). During the court session, the rapporteur presents the facts relevant to the decision, after which the lawyers present their legal arguments. No oral replies are permitted between them, although written submissions of opinions are allowed.

The judicial system of a state serves as the foundation for the administration of justice and the protection of citizens' rights. As the highest judicial authority, the Supreme Court ensures the implementation of the law. It guarantees the independent functioning of the judiciary, thereby contributing to the respect of constitutional principles and fundamental human rights. In the Republic of North Macedonia, the judicial system was established by the 1991 Constitution and is headed by the Supreme Court, which serves as the country's highest court and ensures uniform application of the law. This court “plays a significant role in upholding the constitutional principles governing the system of government, the protection of fundamental rights and freedoms, and the principle of judicial independence” (Gratis 2025).

Concerning the judicial system of Kosovo, the Supreme Court primarily serves as a court that assesses the legality of lower-court decisions by examining extraordinary legal remedies, particularly recourse. In this context, the Supreme Court reviews the contested judgment only within the scope of the challenged part, focusing on the proper application of substantive law and procedural violations relating to legal capacity and the proper representation of the parties.

Comparative analysis shows that in all three countries, Kosovo, Albania, and the Republic of North Macedonia, recourse as an extraordinary legal remedy is aimed at reviewing decisions of the courts of appeal primarily on legal and procedural grounds. The deadlines for filing recourse are broadly similar, generally set at 30 days from the date of notification of the decision in Kosovo and Albania. In Kosovo and Albania, the Supreme Court's review is mainly limited to issues of law and procedural violations. In contrast, in the Republic of North Macedonia, there is, in some instances, a possibility of reviewing factual elements. Furthermore, in North Macedonia, execution of decisions is suspended during the appeal review, whereas in Albania, such suspension occurs only in specific cases, subject to a court decision.

The decisions of the Supreme Courts in all three systems are final and not subject to further appeal. An exception exists in Albania, where an individual may submit a request for constitutional review to the Constitutional Court if it is alleged that fundamental rights and freedoms guaranteed by the Constitution were violated during the judicial process. The main similarities and differences among the legal frameworks of Kosovo, Albania, and the Republic of North Macedonia are summarized in Table 1.

Table 1: The Recourse Procedure in the Supreme Courts of the Republics of Albania, Kosovo, and North Macedonia (Source: Author’s own compilation based on the judicial systems of Kosovo, Albania, and North Macedonia)

Aspects	Republic of Kosovo	Republic of Albania	Republic of North Macedonia
<i>Type of Appeal</i>	Appeal as a means of appealing certain decisions in the Supreme Court	Appeal as a form of complaint against decisions of the Court of Appeal and decisions of the Court of First Instance.	Appeal to the Supreme Court for specific decisions of the Court of Appeal
<i>Conditions for Accepting the Appeal</i>	The appeal is allowed due to a fundamental violation of the provisions of the contested procedure -due to a fundamental violation of the provisions of the contested procedure - due to the incorrect application of substantive law	Recourse is allowed for criminal violations in errors of fact and law.	Appeal is allowed for violations of the law, whether procedural or substantive.
<i>Filing Deadline</i>	30 days from notification of the decision	The deadline for filing an appeal to the Supreme Court against a court of appeal decision is 30 days from the date of notification of the decision. The deadline for requesting a review of the court of first instance’s decision is 30 days.	30 days from notification of the decision
<i>Review of the Recourse</i>	The Supreme Court only considers legal and procedural issues, not factual ones.	The Supreme Court only reviews legal, not factual, issues.	The Supreme Court also examines the facts in some instances.
<i>Effect on Execution</i>	The Court of Appeal’s decision is suspended pending the Supreme Court’s decision.	Execution is suspended only in cases where immediate execution of the decision would lead to serious and irreparable consequences, and the party that has filed the appeal deposits material guarantees to ensure execution of the decision.	The execution of the Court of Appeal’s decision is suspended upon acceptance of the recourse.
<i>Supreme Court Decisions</i>	The decision is final and binding.	The decision is final and binding, except where it is alleged that constitutional rights have been violated and an appeal is made to the Constitutional Court.	The decision is final and without further appeal.

The American judicial system is exercised by the American Supreme Court, whereas, at the state level, its law is based on Anglo-Saxon law. The Common Law system in American law affects only private law, mainly civil and commercial law, including basic principles of procedure and court proceedings. The influence of Common Law lies in the central role of legislation and judicial decisions, in the way of thinking and analysis of doctrine, and in the positions taken by judges.

Judicial decisions are important because they show how the American state and, in particular, its Constitution function. The Supreme Court, being considered one of the oldest

courts, has a constitutional power, which invented the constitutional review of laws and legal acts and constitutionally sanctioned the independence of the judiciary and the principle of legality. In court, the trial procedure is conducted with open doors, even in the presence of the members, and the right to an individual lawsuit is fully recognized, provided that the parties have a legitimate interest. It also judges and, as a court of appeal, examines not only the legal but also the real issues, issuing the most detailed decision.

The English legal system holds that, within the hierarchical structure of the English courts, a decision of a higher court binds a lower court. The review is done by modifying current practice with the rule of previous law using precedent as a necessary foundation on which to decide what the law is and its application to individual cases” (Slapper 2024, 68). Such a system is a mixture of traditional law derived from common law and royal decrees, and is based on the formula “judgment made law.” The House of Lords functions as the highest court in England, adapting English law to previous decisions in lower courts” (Qerimi 2020, 2-3).

In the French legal system, the principle of double jeopardy allows a litigant to have the issue reviewed on the law and the facts a second time. Recours in the *Cour de Cassation* is considered an extraordinary remedy,

where the parties have the right to exercise it only for reasons provided for by law against court decisions either in first instance or on appeal. Due to the distinction between fact and law, recourse represents a third level of judgment where a judge can only verify the correctness of the law and the manner of its application. As a result, the party must file a recourse only for justified and lawful reasons (Cadiet 2011, 337).

THE IMPORTANCE OF DEADLINES IN EXERCISING RECOURSE

A deadline is a period of time, the passage of which the law gives special importance, provided the process is carried out in time; the time element is important in the implementation of procedural acts. Article 145 of the CCP of Albania states that “the deadlines for performing procedural actions are set by law and, when the latter allows it, by the court”. To challenge a court decision, we are dealing with accelerated deadlines; in the case of recourse, it is 30 days. What constitutes a problem in the deadlines for recourse is also the determination of the deadline for exercising recourse against a decision given in the absence of the party exercising recourse, i.e., whether the recourse can be filed within 30 days from the issuance of the decision or within 30 days from the notification of the decision. The appeal deadlines are provided for in Article 443 of the CCP of Albania, which states that “the deadlines are fixed and begin from the day of the announcement of the final decision”. When the court of first instance has tried the case in the absence of one of the parties, this period begins on the day the decision is notified. It is also worth noting that recourse to the High Court, regardless of notification, cannot be made after one year has passed from the announcement of the decision.

In cases where the appellate trial is held in the absence of a party but the requirements for the manner of notification of the parties, verification of the reasons for the absence, etc. have been respected, the final decision of the appellate court must be notified to the party in absentia and the 30-day deadline for recourse must be calculated from the day after the notification. The Joint Panels draw this conclusion from their overall analysis of the norms governing procedural deadlines (SC 2001).

The appeal against the decision of the Court of Appeal must be notified to the interested party in order to allow him to participate in the trial of the case in the Supreme Court and to defend himself. Failure to notify of the appeal deprives the applicant of the right to participate in the trial, rendering the process irregular in the constitutional sense. The right to defend oneself constitutes an important aspect of due process. The exercise of this right places before the judicial bodies the obligation to notify the parties and their defense attorneys of the date and time of the hearing, to ensure their presence and prevent unjust exclusion from the trial. One of the issues affecting the time limits is the determination of the procedural moment until when the party has the right to waive the recourse.

Waiving recourse, as well as exercising recourse, constitutes an exclusive right of the litigant, which the party or the lawyer may exercise until the court has withdrawn for a decision. In the conditions where, as a rule, the trial in the Supreme Court is held in a consultation room without the presence of the parties, the party has the right to exercise such a right as soon as it becomes aware of the setting of the date and time of the trial. “Exercising this right before the Panel withdraws for a decision takes on a different meaning when the trial is exceptionally held in a court session, and the party is present. It may exercise this right at any stage of the process, as long as the trial panel has not withdrawn to make a decision” (Cabej 2022, 4).

EXERCISE OF THE RIGHT OF RECOURSE IN RELATION TO THE APPEAL MECHANISM FOR REVIEWING THE DECISION

Review of the decision is a special appeal mechanism by which a court decision that has become final is challenged. This appeal mechanism is limited, as it is available only for the reasons provided in the Code, and its purpose is to put the same court in a position to try the case again.

The Civil Code examines the request for “review of a final court decision in a consultation room without the presence of the parties, and according to the interpretation of the Court, this appeal must be notified to the party according to the general rules as occurs in the examination of the case in a court session where the interested party must be notified in advance of the request submitted by the other party in order to guarantee the right of defense” (C. Court 2005). Equality of arms and the right to be informed of the facts and arguments of the opposing party constitute aspects of due process. A request for review of a decision does not suspend the execution of the decision, only in cases where the court, upon request of the party, assesses that there is a risk that grave and irreparable damage may be caused. The possibility of exercising the remedy of appeal for review of the decision, being related to the discovery of the causes, may arise at any time and, just like recourse, is subject to the same deadline where the request may be submitted within 30 days from the day the party became aware of the cause of the review.

CONCLUSION

From a comparative perspective, the remedy of *recourse* represents an extraordinary legal mechanism in Albania, Kosovo, and North Macedonia, revealing both notable similarities and procedural differences. In Albania, the High Court generally confines its review to questions of law and procedural violations. Recent amendments to the Civil Procedure Code have sought to enhance judicial efficiency, reduce case backlogs, and align national practice with European

standards. Similarly, in the Republic of Kosovo, recourse serves as a mechanism to ensure the legality of first-instance court decisions by focusing strictly on legal and procedural issues. As in Albania, the Supreme Court of Kosovo does not reassess factual findings; however, its role in unifying judicial practice remains essential for maintaining legal certainty.

The situation differs in North Macedonia, where the Supreme Court enjoys broader powers. Under certain circumstances, it may also review factual elements, a competence that goes beyond the more restrictive approach adopted in Albania and Kosovo.

Despite these differences, several common features can be identified. All three legal systems establish a 30-day deadline for filing a recourse, and decisions of the Supreme Courts are treated as final and binding by lower courts. Furthermore, in each jurisdiction, recourse functions as a cornerstone for ensuring justice and legal certainty. Nevertheless, its effectiveness varies depending on the scope of review, the admissibility criteria, and the procedural safeguards provided in each system.

Ultimately, the institution of recourse reflects the constitutional role of the Supreme Courts in all three countries, highlighting the balance between the need for legal certainty and the protection of individual rights.

This study is limited by its reliance on normative legal analysis and statutory provisions, without incorporating empirical data or examining judicial practice through case law. As a result, the practical application and effectiveness of recourse mechanisms in everyday judicial proceedings may not be fully captured. Future research could benefit from a more detailed empirical and jurisprudential assessment to complement the comparative legal framework presented here.

CONTRIBUTOR

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