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The deadline for lodging an appeal and who can appeal

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Abstract: *The appeal is one of the remedies that give litigants the opportunity to correct the mistakes committed by the courts, it said in a guidebook by the courts portal. The material below will tell you everything you need to know about ordinary appeal call from cases in which you can declare appeal to items that must be included in the appeal.*

Keywords: *appeal, court order, judgment, appeal within*

Introduction

The appeal is an ordinary way to attack, in facto, which can be used against the pronounced decisions on the merits by a lower court, after its withdrawal of cases, for the cause to be put to a new judgment, to reform the judgment under appeal (Papadopol, Turianu, 1994).

The appeal has been known since Roman law, where, in the beginning of year 509 B.C., under a law of the consul P. Valerius Publicola, the prisoners were given the right to make an appeal to people, by way of called provocatio ad populum; once exercised, the appeal was judged after convening the magistrate, by the popular assembly (comitia centuriata for capital assemblies; comitia tribute for convictions fine), that quashed or confirmed the sentence, without being able to modify, aggravate or mitigate it; in front of the popular assembly, the magistrate assumes the function of public ministry, in defense of its decision (Paraschiv, Damascus, 2004).

For us, the codex of criminal procedure from December 2nd 1864, which went into effect on April 30th 1865, contained specifications in the matter of jurisdiction degrees; thus, the appeal in correctional matter and the appeal in police matter is regulated separately; the appeal is judged by the appellate court in whose jurisdiction the tribunal pronounced the attacked decision; it was suspensive the execution, but the court has the obligation to settle it within 30 days from its notification; if it was permissible for violation of law or any illegal omission, the court may decide itself on the merits (Paraschiv, Damascus, 2004).

Criminal Procedure Code from 1936, known as the Carol's 2nd Code of Criminal Procedure, regulates the appeal (art. 455-470) as a way of possible attack only against the judgments in the first court instance or tribunal, being exempted decisions given by the assize court, in the time stipulated in the judicial system in criminal matters (Crisu, 2011).

Debates on the regulation of appeal

Currently, the regulation of the appeal is to be found in the Code of Criminal Procedure - art.408 - art.425.

The deadline for lodging an appeal to the prosecutor, injured person and party, is 10 days, unless the law provides otherwise. The period starts upon communication copy of the minute.

The deadline for appeal is dilatory in terms of the possibility of enforcement of criminal judgment; such judgment may be enforced only after the period of appeal, when it becomes final thru not appealing until that moment (Neagu, 2009).

As long as the defendant was not served with a copy of the minute of the sentence, it is still within to appeal, even if in the meantime the first court ruling was appealed by the prosecutor and the appeal was dismissed; that the defendant has knowledge of the judgment of conviction of the appealed trial filed by the prosecutor does not remove the obligation of the first court to communicate the copy of the minute

and cannot attract, for the defendant, the consequent loss of the period of appeal, which by law, is calculated, only from the moment of communication. [1]

In practice it was held that the prison administration is required to certify the date of declaration of appeal mentioned by the defendant; in the case of non-dating, the administration had to give an appeal a certain date; under these conditions, without the date for lodging an appeal by the defendant taken in preventive arrest, the appeal can not be rejected as belatedly, the date of registered declaration sent to the place of holding to court, being irrelevant. [2]

The witness, the expert, the interpreter and the attorney may exercise the appeal immediately after the pronounced conclusion thru which was decided on legal costs, allowances and judicial fines and no later than 10 days from the sentence that was solved due.

For natural or legal person whose legitimate rights have been directly injured by a measure or an act of the court, the appeal period is 10 days and begins on the date on which they learned of the act or measure which caused the injury.

From the point of view of the possibility of declaring the appeal, the deadline for appeal is a peremptory term (imperative), meaning that the call should be introduced within that period; failure to exercise the right of appeal inside the term entails for the holder or forfeiture of right and nullity of an appeal brought after the expiration (Lorincz, 2009).

It is an absolute term and, consequently, operates decay law, even if it was built by the prosecutor or the opposing party so that the tribunal is obliged to issue the matter od lateness debated between the parties and reject the appeal as late, regardless of the findings made by the parties (Paraschiv, Damascus, 2004).

The deadline for appeal is calculated on days off, being a procedural term, meaning that the system is applied on free units, the last day of it beinf deleyed until the first working day, if the last day ends in a non-working day (Cloudy Tatu, 2001).

When the last day of a deadline falls on a public holiday, the deadline for declaring the attack way of the appeal expires at the end of the following business day, therefor the appeal communicated to the court by fax must be regarded as within stated, and not rejected as late. [3]

The Appeal declared after the debate, but before the judgment can not be rejected as inadmissible, such a case of inadmissibility is not stipulated by law. [4]

Owners of the appeal can be divided into two categories: one in which those who come through their appeal promotes an examination of the solutions given in the criminal action and civil action exerted in criminal proceedings, with regard to the prosecutor, the parties and the prejudiced person, and the second one that promotes only an examination of measures taken in case adjacent issues such as measures on legal costs, the salary due for work done in the trial as a witness, expert, interpreter, appliances, or the disposizion in which a person that was not involved or not a prejudiced person has have been infringed of the legitimate interests (Pavaleanu, 2007).

The right of appeal is given to all who representing an interest in the criminal law report to be judged, but the extend and its effects are limited to the position that each of them has in the process (Paraschiv, Damascus, 2004).

People who can appeal are:

A) the prosecutor on the criminal and civil side;

[1] C.A.B., Section I penal Dec.. Nr. 138/1993, in Vasile Papadopol, Corneliu Turianu, op. cit., p. 263

[2] C.S.J., criminal section, Dec.. no. 2926/1999, in Ion Neagu, op.cit. , pag.307

[3] Targu Mures Court of Appeal, criminal section and cause juvenile and family Dec.. Criminal nr. 67 / R from 11.02.2009 in Ioan Garbulet, Mihaela Vasiescu, relevant issues in criminal matters untied by the Court of Appeal Targu Mures, with notes and comments (2009-sem I 2010), Ed. The Legal universe, Bucharest, 2010

[4] C.S.J., criminal section, Dec.. no. 2342/1999, in Bulletin Jurisprudentei1999-2003, p. 1090

Regarding the criminal law, the prosecutor may appeal against any decision, whatever solution they contain.

Based on the principles of unity or indivisibility and hierarchical subordination, which operates within the Public Ministry, the appeal may be declared either by the prosecutor of the Public persecutor's office attached to the court that issued the decision subject to appeal or by the prosecutor of the Public persecutor's office attached to the superior court (Lorincz, 2009).

In practice, the prosecutor uses his right to appeal, usually to the detriment of the defendant, or to require the conviction if the defendant was acquitted or to terminate criminal proceedings or to obtain reindividualizarea punishment aggravation, in duration or amount or the method of enforcement; but given the general interest in meeting whose acts, the prosecutor may use the appeal when its consequences would be favorable to the defendant (Paraschiv, Damascus, 2004).

In the specialty literature (Boroi, Ungureanu, Jidovu, Magureanu, 2001) has been argued, we appreciate correctly, that even in the situation thru which the appealed judgment, the first court endors the views of the representative of the Public Ministry, it can be called by the prosecutor.

The prosecutor may sustain in court civil action initiated by the injured person; for the same reasons, must be accepted that the prosecutor can hold an appeal made by the civil party[5] .

B) the defendant, in terms of the criminal and civil side;

The appeal for the culprit may be declared, among others, by the defender; it can be employed by any person, not just the by the culprit in person[6] .

The culprit can not appeal the judgment at first instance without having a legitimate procedural interest.

The appeal, having a personal and independent character, the defendent's criticism may not relate to the situation of other people, who even in changed situation, would not relate to his person (Cloudy, Tatu, 2001).

Husband is substituted in declaring procedural appeal for the defendant; no close relative of the defendant, such as his brother or mother, is not authorized by law to appeal for the defendant and nor the concubine (Pavaleanu, 2007).

C) the civilian side, in terms of the criminal and civil side, and civilly responsible party, regarding the civil side, and regarding the criminal side, to the extent that the solution of this aspect influenced the solution of the civil side;

If the civil party is major, the appeal cannot be exercised by the father, as he does not have the status of legal representative; under these conditions, the appeal will be rejected as inadmissible, being declared by a person without legal standing. [7]

In case of death of the civil party or of the civilly liable party, their heirs, introduced in the process, became the holder of the right of appeal, and in the case of a legal person, this right goes to the successor of the legal person or to the liquidators called into question (Pavaleanu, 2007).

The civilly responsible party can use the right of appeal independent of the defendant's possition against the first court solution, ie independent of whether he used or not the appeal way (Theodoru, 2002).

If a person has not been introduced in the process as civilly responsible party is still liable for damages, with the defendant, unlawfully assigning this attribute, there is for her the right to appeal because - whether in violation of legal provisions - was considered part of the process; but if the first instance was limited to stating in the dicision grounds, about a person that did not appear as part of the

[5] Court of Appeal Suceava, Dec.. Pen. no. 337/1998, in. Bulletin jurisprudence. 1997-1998 Collection of judicial practice. Criminal Law. Criminal Procedure Law, Ed. Lumina Lex, Bucharest, 1999 pag.164-165

[6] I.C.C.J., Criminal Section, Decision no. 3243 of 24 May 2005, www.scj.ro

[7] C. A. Suceava, Dec.. pen. no. 205 / A / 1999, in Ion Neagu, Treaty of Criminal Procedure. The special ed. The Legal universe, Bucharest, 2009, p. 292

process, it is liable under civil aspect, but without the person to be liable for damages, leaving that any claims of civil party to be recovered by a separate civil action – the person in talk has no right of appeal because its interests were not injured at all, being able to fully defend themselves in the eventually of a subsequent lawsuit (Paraschiv, Damascus , 2004).

D) the injured party, regarding the criminal side;

Regarding this legal provision, we notice that in legitimately way, the legislature has limited the right to appeal to the prejudiced person only in the criminal side considering the fact that the person has not shown to the jury the option to fund a civil concerned.

E) the witness, the expert, the interpreter and the lawyer, in terms of legal costs, benefits due to them and judicial fines imposed;

This avoids the situation that in some cases, capitalizing the right to legal expenses to be made on the civil action way; it is understood that the right of these persons to exercise the appeal does not involve the right to be served with the decision (Papadopol, 1994).

Witness, expert, artist and lawyer amid criticism will not solve the case but not in terms of the criminal, nor in terms of the civil side (Radu, 2014).

F) any individual or legal person whose legitimate rights have been directly injured by a measure or an act of the court regarding the provisions that have caused such damage.

For people under letter b) -f), the appeal may be declared by the legal representative or by the attorney, and for the defendant, even by his spouse as procedural substituted.

The appeal made by the defendent's mother is inadmissible, who has no legal standing if the defendant is an adult, has full legal capacity and can not be represented by the parents. [8]

In this situation, however, the person in which favor the appeal was declared may not acquire the attack way, in which case the solution that the appeal court has to pronunce will be rejected as the appeal is inadmissible.

Conclusion

A judicial decision may be unlawful and ungrounded because of two fundamental flaws: its declaration as a result of disregarding the rules of criminal procedure, which ensures and guarantees the rights of the parties truth of nature to doubt the correctness of the solution adopted (vitium in procedendo); solving the wrong case (vitium in judicando) or by establishing the facts wrong (the actual error), which led to the conviction of an innocent or to the acquittal of a felon or by misapplication of the rules of substantive law - criminal or civil - or omitting their application (error in jure), which led to a solution not in accordance with law; deficiencies concerning violation of the law - procedural and substantive - come from insufficient knowledge of the rules of law, the wrong interpretation of their violation or abuse; deficiencies on the wrong setting of the situation come from omitting all the evidence necessary due to inactivity parties and the lack of an active role of the courts, the undiscovery of evidence on time, or by the incomplete or incorrect assessment of the evidence, which attracted retention of facts as true not actually occurred or happened in other circumstances than those retained, or non withholding of facts that occurred in reality (Theodoru, 2002).

[8] Court of Appeals, Second Section of criminal Dec.. Nr. 1661/1999, the collection of practice in Criminal Matters 1999 Criminal Law. Criminal Procedure Law, Ed. Rosetti, Bucharest, 2001 pag.Curtea call Bucharest, collecting practice in Criminal Matters 1999 Criminal Law. Criminal Procedure Law, Ed. Rosetti, Bucharest, 2001, p 212

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