



Kolegji AAB

FACULTY OF LAW

DEPARTMENT: PENAL-LAW

POST DIPLOMATIC-MASTER STUDIES

THEME:

**APPEALS AGAINST THE DECISIONS OF THE FIRST INSTANCE DUE
TO DEFECTS IN THE STATE OF FACTS AND VIOLATION OF THE
CRIMINAL LAW, WITH SPECIAL OVERVIEW IN THE TERRITORY OF
THE MUNICIPAL COURT, NOW FUNDAMENTAL OF GJAKOVA, IN
THE PERIOD 2000-2005**

Mentor:

Prof.Dr. FejzullahHasani

Candidate:

AmireZeqiri

Prishtinë, 2016

Content

Introduction.....

Purpose of this master thesis.....

Targets.....

Importance of theme

Structure of paper.....

Chapter I

Meaning and types of legal tools.....

Types of legal tools.....

Regular legal tools

The appeal against the verdict of the court of first instance

Right to appeal

Contents of appeal.....

Reasons of the exercise of the appeal against verdict.....

Essential violations of the criminal procedure provisions

Criminal offenses

Wrong confirmation and incomplete of the factual situation

Appeal against the verdict because of the decision on criminal sanction.....

Procedure of the appeal.....

Proceedings on the appeal in the Court of First Instance.....

Proceedings on the appeal in the Court of Appeals

Meaning of appeal.....

Chapter II

Types of decisions in criminal procedure

Decisions which can be hit with appeals

The appeal against the verdict of the court of first instance because of the factual situation.....

The appeal against the verdict of the court of second instance because of the defects of the factual situation

The appeal against the verdict pronounced outside the regular procedure.....

Appeal against the verdict for renovation of conditional judgment

Decisions of the court of second instance in deciding on the appeal due to defects in the actual situation.....

Chapter III.....

Retrial.....

The appeal against the verdict of the Court of Appeal

Appeal in the verdict.....

General reviews

Extraordinary legal tools.....

Reasons of the appeal against the verdict

Decision of appeal against the verdict

Review of Criminal Procedure.....

General review

Incorrect review of criminal procedure.....

Correct review of criminal procedure.....

Review of criminal procedure fired with a final verdict

Review of the complete procedure with a final verdict

Authorized persons to watch the review of the criminal law.....

Request for the extraordinary mitigation of the sentence

Request for protection of legality

Extraordinary mitigation of the sentence.....

Allowing the extraordinary mitigation of the sentence.....

Disposal of non-term deposits appeals

Disposal of illegal appeal.....

Rejection of the appeal as unfounded and the confirmation of essential court verdict

Annulment of the basic court verdict.....

Chapter IV.....

Practice of cases against the first instance decision in the Court of Gjakova.....

Conclusion

Literature and Bibliography

Introduction

Stream of the criminal procedure requires procedural activities of persons who are authorized to make different decisions, by which decisions is administered the procedure, the accountability of other subjects is verified, or eventually is decided on the merits or the incredibility of the authorized prosecutor's request for prosecution.

With court decisions any time is decided for any legal material issue, factual or legal-procedural, which are in the interest of justice. Depending on the type, character and content of the decision, and its procedural-legal importance, Law on Criminal Procedure, has clearly defined when and which body (responsible authorities for the interior, the previous trial judge, public prosecutor, the chairman of the presiding judge) can take such decisions.

According to the realistic assumptions that procedural bodies in certain situations they are likely to make the wrong and illegal decisions, the legislator has provided for the right and the possibility that any interested pair in criminal proceedings under conditions set by law, such decisions to challenge through regular or legal extraordinary tools.

The right on complain against court decisions is a constitutional principle which is explicitly stated in Article 32 of the Constitution of the Republic of Kosovo, when it comes to law tools against judicial decisions.

Law tools contribute in the state of the truth, because these tools challenge the decisions of the first instance and it will place them before an examination of a second instance (higher) in certain situations even before a third instance court.

Law tools are used to correct the mistakes which could happen even in the most perfect procedures, respectively in jurisprudence system with a high level of professionalism. Existence of law tools makes the judges aware to be more attentive, more persistent, more professional and if they do not meet the legal and procedural instance, their decisions will be subjected to the examinations of higher instance court, and thus even the possibilities of cancellation or correction of their decision

The role of tools is important in terms of harmonization of judicial practice as an important element of the legality and implementation of a particular course of punishing.

Appeal procedure offers participants in the proceedings, first of all prosecutors and lawyers, and a confrontation of claims arena that judicial decisions are illegal and that they give their contribution for the imposition of legal decisions and rights.

Purpose of this master thesis

Purpose of this paper is to explore how courts verify relevant facts in legal and criminal matters and this factual situation will be placed under the certain legal rate. By this topic I expect to expand my knowledge on this important segment of the criminal procedure, such as facts, how are they confirmed, evidence that establish the facts, direct evidence; then establishing the facts by indications (indirect evidence), where are presented the most frequent mistakes in establishing the facts.

Targets

I will endeavor to treat this subject in all its dimensions: incorrect finding of the facts; not full verification of the facts, which produces reflections in a criminal process, the defects in the state of facts, that interfering in the legal and procedural violations.

I will examine in practical terms the decisions, whether with defects in the evidence, or in the segment of violation of the criminal law in the territory of the Basic Court in Gjakova for the five year period, focusing more in those decisions that the international court assessed illegal, whether due to defects in the field of facts or the application of law.

I will also try to explore the way how courts have approached the relevant facts, how did they assess them, how convincing was the court on such conclusions, how are explained in the court decisions the factual certified state and criminal law applied in such state.

Importance of paper

There is no dilemma that the primary task and the most important court in criminal proceedings is found in the area of facts, and its main activity is oriented to clarify the factual side of the case.

The factual situation is the most crucial and the most delicate of the criminal proceedings, either in establishing material legal issues, whether it comes to issuing a decision on the main issues, or on secondary issues. Any judicial decision is based on certain facts that have happened in real life.

Based on the principle that man makes mistakes consciously or unconsciously, so do the judges in performing their function. Judges as well as others suffer from disabilities, whether moral insufficient knowledge and unprofessionalism, consequences of this are taking the wrong and

illegal decisions that not infrequently lead to irreparable consequences, and such wrong decisions often put in question the credibility of the justice of a particular state, but even of the state in general. Appeals regarding defects in the factual situation presented as the antithesis-negation of such decisions.

Areas where mostly are attacked the judicial decisions are defects in the factual situation as the wrong proof of relevant facts. In the legal and positive aspect, I will study in detail the state of facts, the issues of fact and law, the factual situation, appeals regarding defects in the state of facts, extraordinary legal tools and factual situation, I will make examination of defects on the factual situation by the second instance court, decisions of the court of the second instance when defects are found in factual situation, and the principle reformation impetus. In comparative terms I will analyze some legislation that regulates the issue of the appeal which relates to defects in facts. With analytical methods, I will analyze judicial decisions in a certain period to see how to establish the facts, which are the biggest omissions in this segment.

Structure of the Paper

In the first part, which consists of two chapters, the facts are considered in general. The second part will also consist of two chapters, which will examine the factual situation and criminal-material right, legal - procedural aspect of the confirmation of the factual situation in the criminal procedure, evidence that verifies the facts in criminal proceedings, as well as the incorrect confirmation or incomplete of the factual situation. In the third part, which includes two chapters, are examined the appeal as a legal tool and factual situation, are handled field appeals with the Basic Court in Gjakova (former Municipal Court), due to defects in the factual situation in the period 2000-2005.

Conclusion

Factual situation is a very complex issue and is the area where mostly are made judicial mistake because of which the consequences are often irreversible and sometimes compromising as well for the judiciary, especially in those countries where their legislation they foresee death penalties and as a result of judicial mistake in the factual situation comes to the execution of innocent people.

Wrongly established factual situation that is not fully certified it interferes in other procedural violations, violations of criminal law and also in the penalty decision. Despite the fact that in the confirmation of factual condition are contributing more subjects, starting from the police, prosecution, courts, witnesses, experts, yet miscarriages of justice are inevitable, sometimes due to unprofessionalism of judicial officials, negligence in case of the confirmation of the relevant facts or for other reasons, sometimes even intentional.

In order to avoid these mistakes in the factual situation is provided that that in contemporary legislation the factual situation can be examined in some degrees. But in some positive legislation for this base of appealing, cannot be attacked all judicial decisions, but only some consideration for certain criminal offenses. Code of Criminal Procedure in Kosovo, provides that all judicial decisions, regardless the severity of the crime, to be appealed due to defects in the state of facts, whether it is a wrong or incomplete confirmation of the factual situation.

But when it comes to the factual situation with the Code of Criminal Procedure is provided a possibility that the factual situation to be challenged with extraordinary legal tools, such as the request for the reviewing of criminal proceedings because of the facts and new evidences that they have to do to influence the penalty decision, with the request for protection of legality (indirectly) even though the legal basis for the request for protection of legality is not the factual situation what can be interfering in Article 458 of KPPPK. The request for extraordinary mitigation of the sentence and this extraordinary legal tool has to do with the factual situation but not for the decision as a whole, but a part of it- decision on penalty.

Code of Criminal Procedure of Kosovo in this regard has gone a step ahead and has anticipated the possibility that the court of second instance, when considering the appeal, set aside the judgment of the first instance if it appears serious doubt on the accuracy of material facts found in judgment, for which the court concludes that the situation is wrongly or incompletely confirmed to the detriment of the accused, even if the factual situation is not challenged by the appeal of the pairs (a similar form of placement, like the request for protection of legality, with a difference that the request for protection of legality, the judgment is canceled because of the doubts on correctness of the facts situation, either in favor or to the detriment of the accused).

While in the appeal, the judgment is canceled necessarily, only when there is a suspicion that the factual situation was wrongly or incompletely confirmed to the detriment of the accused).

From the research of cases that I have done, I found that a large number of cases are broken due to defects in the factual situation. Also, a significant number of requests for the review of criminal proceedings due to new evidences and facts have been approved, which lead to the conclusion that the issue of confirmation of the factual situation is very delicate and complicated, with great possibilities of mistakes and aberrations.