3) the defendant was already convicted for the same action for misdemeanor, criminal or economic violation;
4) new facts are brought to the court, or the court discovered new evidence that can be used and possibly could lead to a different decision;
5) the defendant gain the opportunity to use the declaration of the European Court of Human Rights about the violation in same matter, that can be related to this procedure and can issue more favorable for the defendant;
6) the Constitutional Court, in the procedure on the appeal, found a violation or denial of human or minority rights and other rights guaranteed by the Constitution in misdemeanor procedure, and that could be of influence on more favorable decision for the defendant.

2. Request for the protection of lawfulness can be submitted if:

1) violation of the Law or any other regulation concerning misdemeanor occured;
2) the Law that was applied was found not to be in conformity with the Constitution, generally accepted rules of international law and ratified international treaties.

Request for the protection of lawfulness can be submitted by the public prosecutor within three months from the date of the delivery of the verdict.

8.4. Civil Procedure

Civil procedure may be contentious, non-contentious and executive. Negligent and unprofessional treatment of patients by Health care providers can lead to physical damage, damage to the Health of the patient and also to his death. That situation also represents a crime of negligent provision of medical aid and violation of Health care regulations and Ethics Codes. Damages suffered in this way, the patient can compensate in criminal procedure or in separate civil procedure.

Types of damages:

Law on protection of patients' rights stipulates the right of the patient for compensating for damages caused by professional Health care providers or associates during the process of providing Health care. The damage may consist of injuries (physical damage) or deterioration of the Health status of the patient (Article 31 of the Law).[229] The Law further indicates the general rules on liability for damages pursuant to the provisions of the Law of Contract and Torts.[230]

A person who had suffered the damage due to malpractice has the right to seek compensation for both material and non-material damage.

Material damage may be in damaging or destructing of personal belongings in the Hospital, the loss of future earnings, subverting the benefit of missed work, extraordinary costs of treatment due to medical error, death or disability of the caretaker person, funeral expenses. The aim of the material

229 Official Gazette RS, 45/2013.

230 Official Gazette SFRJ, 29/1978, 39/1985, 45/1989 - decision of the Constitutional Court of Yugoslavia and 57/1989, Official Gazette SRJ 31/1993 and Official Gazette SCG 1/2003 – Constitutional Charter.

compensation is establishing conditions that existed prior to the occurrence of adverse events. When it is not possible, the responsible person is obliged to monetarily compensation. The damaged party is entitled to compensation for ordinary damages and for the lost profit, which could be expected in the ordinary course of events and circumstances. If the damaged party is losing profits due to temporary or permanent incapacity for work or the possibility of its further development and advancement is reduced or impossible, the responsible person will have to pay the appropriate ammount as a form of compensation for that damage.

The Law of Contract and Torts contains specific rules on compensation for material damage in the event of death, physical damage or damage to Health. A person who causes another's death, must reimburse the costs of the funeral. Furthermore, he must reimburse the costs of treatment of the injuries and other necessary expenses in connection with the treatment, as well as earnings due to inability to work. As a rule, then the reimbursement is determined in the form of money rent for life or for a specified time (Article 188).

Consequential damage is mental or physical pain that the person had suffered, for example, due to disfigurement and reduction of life activities, family death, injury to reputation, the caused fear. Even if the compensation for the material damage does not occur, the damaged party is entitled to compensation for consequential damage if it is justified by the circumstances of the case, intensity of the pain and fear and their duration. In the case of death or serious disability of a person, members of his family are entitled to compensation for mental anguish. If it is certain that the damage will continue for the future period, the court may award compensation for future damages (Articles 190 to 202 of the Law of Contract and Torts).

Who can file a lawsuit for compensation of the damage?

A lawsuit may be filed by the damaged party, but if the patient died or suffered a severe degree of disability, compensation may be claimed by members of his family, brothers and sisters who lived with him in the same household, along with the person who were depending on the help of that patient. In addition to these persons, compensation may be claimed by the employer of the injured patient, because of the costs of treatment within the compulsory Health insurance.

The lawsuit for damages, in this case, is filed against Health care institution where the patient has suffered the damage. Health care provider, as an individual, may be sued only if it had intentionally harmed the patient.

This is a lawsuit that seeks condemnation of certain performance (giving, committing, omitting or suffering) - conviction or so-called condemnatory lawsuit (Article 46 of the Law of Contract and Torts). The prosecutor declares a claim of substantive law and that is why the defendant should be obliged on certain performance.

Competent Court:

The lawsuit is submitted directly to the Court by mail or by a person registered for performing delivery, persons employed by the Court, other state agencies or entities with public authorities. Immediately upon the receipt of the lawsuit the Court decides whether it's in his jurisdiction.

In a civil procedure an individual judge leads the trial, or a Judicial Panel; whereby in the first instance, as a rule, there is an individual judge, unless the Law provides otherwise. Immediately upon receipt of the lawsuit, the Court, *ex officio*, assess whether an individual judge will judge or a Judicial Panel. Law on Civil Procedure provides the possibility that the parties may agree that their dispute, instead of individual judges, can be lead by the a Judicial Panel (Article 36, paragraph 1 of the Law).[231]

The Court with *territorial jurisdiction* is the one where is the domicile of the defendant. If the defendant is not domiciled in the Republic of Serbia nor in another state, territorial jurisdiction has the Court of his residence. In case of a legal entity, the Court with territorial jurisdiction is the one on whose territory the legal entity is located.

In addition to the general territorial jurisdiction, there is a special territorial jurisdiction in certain cases. Thus, for the trial of disputes due to non-contractual liability for damages, the competent is the Court in whose territory the harmful action was performed or in whose territory the harmful consequence occurred. Furthermore, if the damage was due to the death or serious physical damage, in addition to the above-mentioned Courts, the competent is the Court in whose territory the plaintiff has permanent or temporary residence (Article 44 of the Law on Civil Procedure).

The *subject-matter jurisdiction* of Courts is distributed according to the type of dispute, whether the basic or higher Court will act as a Court of first instance. The criteria of demarcation in Serbian law is the value of the dispute. When it comes to the rights of patients and their demands for compensation, in the first instance, in most cases, it will be the subject-matter jurisdiction of the basic Court. Exceptionally, when the value of the dispute is over 100,000 RSD, the higher Court will have subject-matter jurisdiction in the first instance.

Regulations on *functional jurisdiction* determine which Court will be competent to decide in the second instance, or in the process of extraordinary legal remedies in the same matter. So, the rules of subject-matter jurisdiction define which Court will be competent in the first instance and the rules of functional jurisdiction define which Court will be competent in higher authority. Given that in the first instance for damages to patients basic Court is competent, in the second instance the higher Court is competent.

Content of the lawsuit:

The lawsuit, counterclaim, the answer to the lawsuit and the legal remedies must be:

- in writing,
- comprehensible,
- must contain all the required elements:
  - indication of the Court,
  - name, legal name of the company or other legal entity,
  - permanent or temporary residence or seat of the parties, their legal representatives or power of attorney,
  - the subject of the dispute,
  - content of the statement and
  - the signature of the applicant.

231 Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.

If the statement contains a request, it is necessary to brief the facts and evidence on which the statement is based.

In particular, lawsuit must contain: same data as any other submission, the claim regarding the merits and incidental claims, the facts supporting the claim, suggestion of evidence to establish this fact, the label of the value of the dispute and the plaintiff's proposal (Article 192 of the Law on Civil Procedure).

The Court can not decide on something that the parties did not request in the course of the procedure (Article 3, paragraph 1 of the Law on Civil Procedure). On the other hand, the Court is not tied to the mentioned legal basis of the lawsuit. The legal basis of the claim relates to the choice of substantive norms under which the prosecutor subsumes its factual allegations in the lawsuit.

In addition to the legal basis, the lawsuit may also contain the following optional ingredients: a request for exemption from payment of costs of the procedure, the request for providing evidence, the request that the defendant submits personal identification to the Court, the proposal for the determination of provisional measures.

In case that the submitted lawsuit is not understandable or does not contain the required information listed, the court will return it to the party for correction, specifying a period of eight days in which the correction must be made. If the correction submission is not returned, it will imply the withdrawal, and if the uncorrected submission is returned, it will lead to his dismissal.

If the submission is incomprehensible or incomplete, and in the name of the party it was filed by his attorney, the public prosecutor or public attorney, the submission will be rejected.

Procedural rights and procedural obligations of the parties in civil procedure

Persons who participate in the procedure are entitled to become familiar with the materials from the procedure and have a copy of them, present evidence and to participate in their checking, ask questions, provide explanations during the procedure, give arguments in favor of their demands and to exercise other rights provided by the Law on Civil Procedure. Modern procedural law does not recognize the obligations in terms of the substantive rights that could be made compulsory. In accordance with the fundamental principles of the civil procedure and principles of litigation, they are only demanded to take certain procedural actions because, otherwise, there will be negative consequences. The party can actively participate in the procedure by suggesting evidence, coming to hearing, but it is not obliged to do so.

However, in addition to this, there are procedural obligations of the parties to to speak the truth, to conscientiously use their procedural rights and do not abuse them. There are different cases that constitute an abuse of procedural rights. For example, creating false facts to produce certain procedural consequences, which otherwise would not arise; behaving contrary to what has been agreed with the other party; undertaking procedural actions with the aim of delaying the litigation.

In the case of litigation malpractice, the legislator provides appropriate sanctions: from the reimbursement of expenses to the opponent, imposing fines for both parties, agents, attorneys, interventionists and experts.

8.4.1. THE COURSE OF THE PROCEDURE:

The course of the procedure is stipulated in detail in the Articles from 289 to 335 of the Law on Civil Procedure.

Litigation begins by submitting the lawsuit to the defendant. The Court prepares the hearing upon receipt of the lawsuit, that includes: preliminary examinationof the lawsuit, submition of the lawsuit to the defendant for a response, scheduling a preliminary hearing and the trial. After preliminary examination the Court can issue a decision rejecting the lawsuit as: request is not within its jurisdiction; the request is untimely, incomplete or incomprehensible; there is an ongoing litigation for the same claim or has been already concluded; or because there is no legal interest in filing a lawsuit.

If none of these obstacles is present, for further discussing the lawsuit, it is delivered to the defendant for response. Within 30 days of submitting the lawsuit to the defendant to reply, the preliminary hearing will be held, where lawsuit and the response to the lawsuit are exposed, with discussing about the proposals, claims and factual allegations of the parties. In a further period of 30 days the Court shall schedule the main hearing, at which participants (familiarised with the course and results of the preliminary hearing) and the parties continue to discuss proposals and their factual allegations to substantiate their claims. The parties can discuss their own legal conceptions and perceptions of the dispute. Until the conclusion of the hearing, the parties may present new facts and propose new evidence.

When the case is sufficiently discussed, the Court states that the trial was concluded. During deliberations, the court may determine that the subject is not sufficiently discussed, so that it can come to the reopening of the trial.

Upon conclusion of the hearing, the Court issues a verdict. If the trial was held before a Judicial Panel, judge and panel members who participated in the main hearing gives the ruling. Verdict shall be adopted and published. Written verdict must contain an introduction, statement and explanation.

8.4.2. COURT SETTLEMENT:

During the procedure, the Court will inform the parties with the possibility of settlement before the Court during the procedure and until its completion (Articles 336 to 341 of the Law on Civil Procedure). The settlement comes mainly by the prosecutor, withdrawing from the part of the claim or agreeing to pay the penalty.

The court settlement that is concluded in that case, has the effect of the substantive contract, but leads to the completion of the litigation and the record of the court settlement has the effect of an enforceable document. The enforceable document means that if the party listed as the debtor in the court settlement does not fulfill its obligation voluntarily, the creditor does not have to re-file lawsuit against him, but may immediately require compulsory execution of settlement.

8.4.3. REGULAR LEGAL REMEDIES:

An appeal against the verdict is a regular legal remedy against all verdicts issued in the first instance and the right to appeal is guaranteed by the Constitution (Article 26, paragraph 1, of the Constitution of the Republic of Serbia).[232] The appealant can not, in any way, be deprived of this right. The process of the litigation represents a continuation of the first instance procedure. Appeal against the verdict challenges the lawfulness and accuracy of the verdict in the first instance.

The appeal must be filed in writing, within 15 days of the delivery of a copy of the verdict. It will not be allowed if submitted by a person who does not have a legal interest or procedural identification, which renounced the right to appeal or an appeal has already been withdrawn (Article 378, paragraph 3 of the Law on Civil Procedure).[233]

In the appeal, it must be noted: the challenged verdict, and whether it has been challenged in its entirety or only in a certain part, the reason for the appeal and the signature of the applicant. The lack of some of these elements does not impose the rejection. It is sufficient that the appeal contains indication of the verdict that is challenged and a signature of the applicant, and that the Court takes it into consideration.

Optional elements of the verdict is the appeal proposal to amend the contents of the verdict by the competent Court of the first instance.

The reasons for contesting the verdict are (Article 373, paragraph 1 of the Law on Civil Procedure):

- essential violation of the civil procedure,
- incorrectly or incompletely established facts,
- wrongful application of the relevant substantive law.

Appeal procedure has two stages. First, in front of the Court that issued the contested verdict and second, the second instance Court which decides on the appeal.

The appeal is always submitted to the first instance Court and he decides on the admissibility of the appeal and may be reject if it is untimely, incomplete or prohibited (Article 378, paragraph 1 of the Law on Civil Procedure). If it is permitted, the Court sends the response to the opposing party, which has 15 days to respond to the appeal.

After receiving the response to the appeal or, perhaps, when the deadline for response to an appeal had expired, the first instance Court submits entire case file to the second instance Court.

The course begins with the second instance court judge's report, in which he briefly introduces the course and the outcome of the current legal procedure. Judge may obtain a notice of the Court of first instance, if the reason for the appeal are essential violations of civil procedure. About the information and explanations which a first instance Court provides for the second instance Court, parties are not informed and are not familiar with their contents.

232 Official Gazette RS 98/2006.

233 Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.

Furthermore, the second instance Court may decide on the appeal in closed session, already at the hearing, or through discussion before a panel of this Court. The discussion can be mandatory or optional. As a rule, the the second instance Court decides on the merits of the appeal without a hearing and then decides within 9 months from the date of delivery of the case file from the first instance Court.

Optional oral hearing is held on the grounds of expediency, or if the second instance Court finds that the discussion could eliminate procedural flaws related to errors in the execution of certain evidence or in their wrong assessment. The same rule applies when it is necessary to fully and accurately establish the facts. Also, the Court can find that the facts were incorrectly identified as the first instance Court rejected evidence from both parties that were of importance in determining the essential facts.

It is the duty of the court to schedule an oral hearing and decide on all applications of the parties if there is already a verdict repealed on appeal and if the new first instance court decision is revoked for errors or incomplete facts. Also, the second instance Court must decide when the lawsuit is modified in the procedure, with a new claim together with the existing one on the same facts, or the claim is increased.

When deciding on a hearing, the second instance Court decides on the merits of the appeal and of all the requirements of the party, if it determines that the appeal is well founded, that substantial violations of civil procedure are committed or that the facts were incompletely or incorrectly determined. The hearing takes place before the second instance Court, according to the rules of the first instance procedure.

The second instance Court supervises the lawfulness and regularity of the first instance verdict, the part on that the party appeals, only if it is the authorized person. The second instance Court examines the reasons for the appeal concerning incorrect or incomplete facts only if that is stated in the appeal. Then the Court will examine the factual part of the reasoning. If it comes to other reasons for the appeal, the second instance Court will not examine the facts and is related with the facts that is already established by the first instance Court. New facts and new evidence can not be presented in the appeal, unless the appellant was unable to present them, without his fault. *Ex officio*, the Court always takes into account whether there are significant violations of the provisions of the civil procedure that makes the verdict of the first instance Court invalid and if there is a correct application of the substantive law.

The second instance Court issues a decision or a verdict.

With the *decision*, the Court rejects the lawsuit as inadmissible; repeals the verdict and returns it to the first instance Court for retrial; repeals the verdict and dismiss the charges. Also, the decision of the second instance Court will suspend civil procedure if the parties have renounced the lawsuit, acknowledged the lawsuit, concluded a court settlement or the appelant withdrew the appeal during the second instance procedure.

With the *verdict*, the second instance Court can modify the verdict of the first instance Court and decide on the request of the parties; it can dismiss the appeal as unfounded and confirm the first instance verdict; it can adopt the appeal and decide on all the requirements of the parties.

The verdict must be issued in writing, within 8 days from the date of publication.

8.4.4. EXTRAORDINARY LEGAL REMEDIES:

In addition to the appeal as a regular legal remedy, it is possible to declare and extraordinary legal remedies against the verdict in Serbian Civil procedural law: revision, the request for review of the verdict and the request for a renewal of a procedure (Articles 403 to 433 of the Law on Civil Procedure).[234]

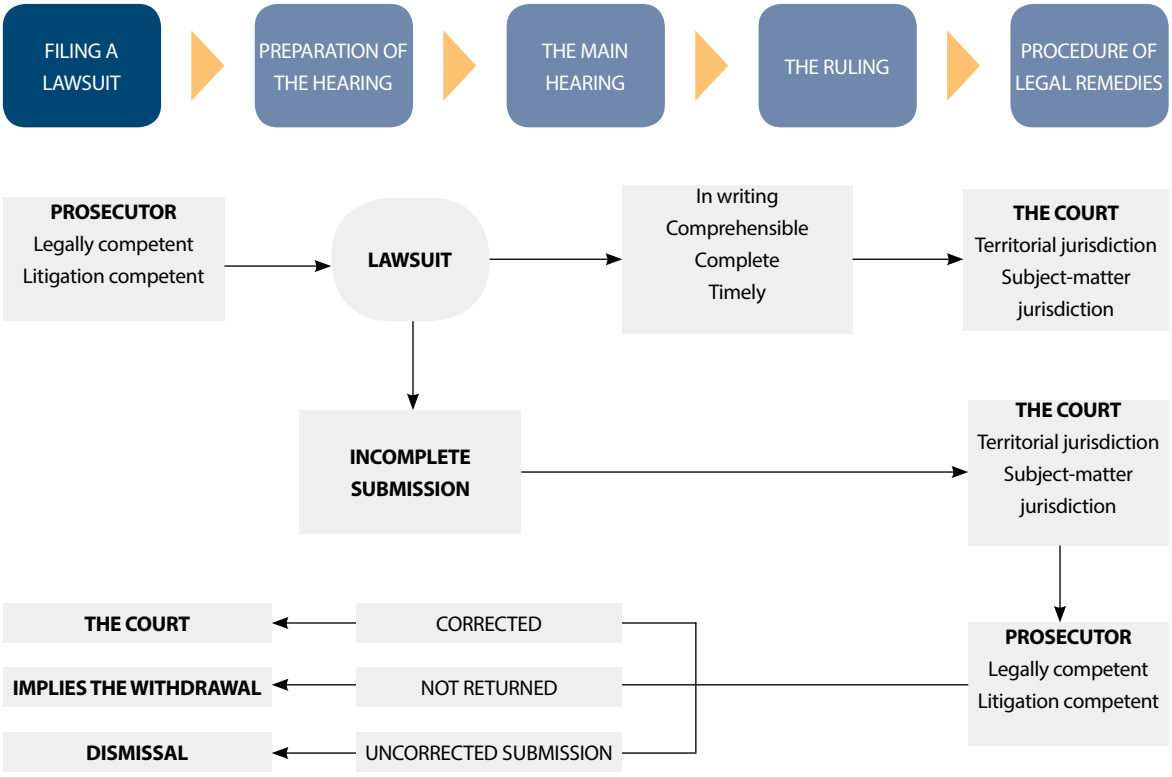
Revision may be declared against the final verdict issued in the second instance, because of essential violations of the civil procedure (Article 374, paragraphs 1, 2, Clause 2, 6, 8, 10, 11 of the Law on Civil Procedure), wrongful application of substantive law, transgression of the appeal only if the violation occurred in the second instance procedure.

The request for review of the verdict may be declared against the final verdict of the second instance Court. The request is declared by the Republic Public Prosecutor to the Supreme Court of Cassation if the violation of the law is of the public interest.

Renewal of a procedure: At the suggestion of the parties, procedure may be repeated because of a large number of reasons listed in the Law on Civil Procedure (Article 426). The request for retrial represents the most important extraordinary legal remedy because bases for its declaration are widely set, together with longer time limits in comparison to other remedies.

The course of the civil procedure is shown in the Diagrams 8.1, 8.2, 8.3, 8.4 and 8.5.

DIAGRAM 8.1. THE COURSE OF THE CIVIL PROCEDURE: FILING A LAWSUIT

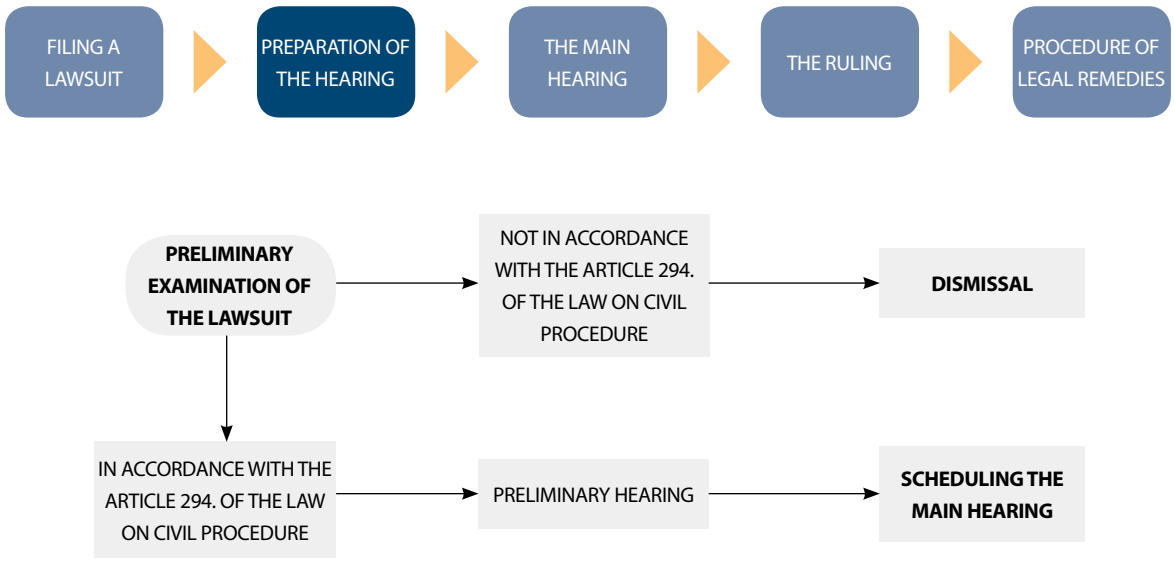


The source: Law on Civil Procedure, Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.

Comment: According to the Article 101, paragraph 1 of the Law on Civil Procedure there is a possibility of returning submission only for the persons with no power of attorney. If they have one and the submission is incomprehensible and incomplete, the Court will dismiss it.

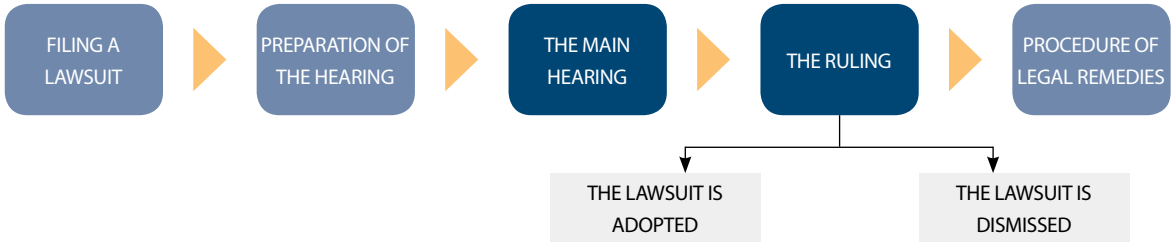
234 Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.

DIAGRAM 8.2. THE COURSE OF THE CIVIL PROCEDURE: PREPARATION OF THE MAIN HEARING



The source: Law on Civil Procedure, Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.

DIAGRAM 8.3. THE COURSE OF THE CIVIL PROCEDURE: THE MAIN HEARING AND THE RULING

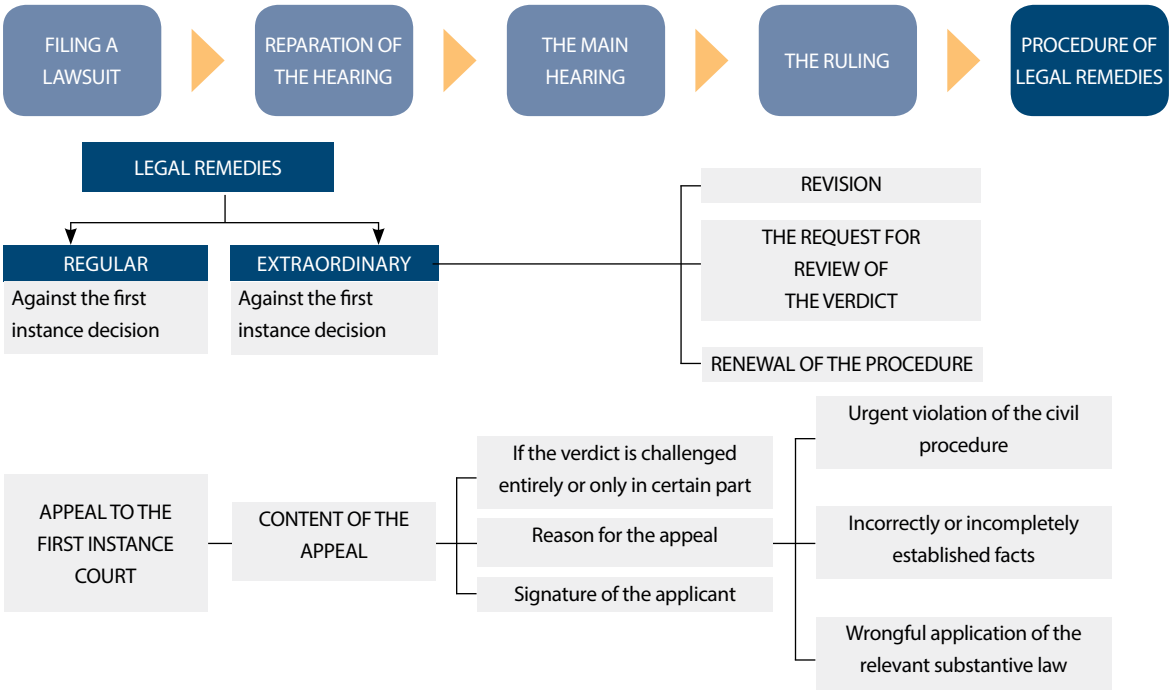


THE AIM OF THE MAIN HEARING
Discussing about the proposals of both parties and the factual allegations that the parties use to explain their proposals or refute the opponents
Providing evidence and their presentation for decision making (investigation, witnesses, expert testimony, documents, hearing of the parties)

PARTS OF THE VERDICT
Introduction • Indication that the verdict is issued and published on behalf of the people • Name of the Court • Data on both parties, their legal representatives and public attorneys • Value of the dispute • Brief description of the subject of dispute • The date of conclusion of the main hearing and the issuing of the verdict
Statement: • Court decision to adopt or dismiss the requests concerning the subject of the dispute and supporting claims • Decision on the existence or non existence of prominent claims to be refuted
Explanation: • Requests of the parties • Facts on which the requests are based on • Factual situation • Requlations on which the verdict is based on

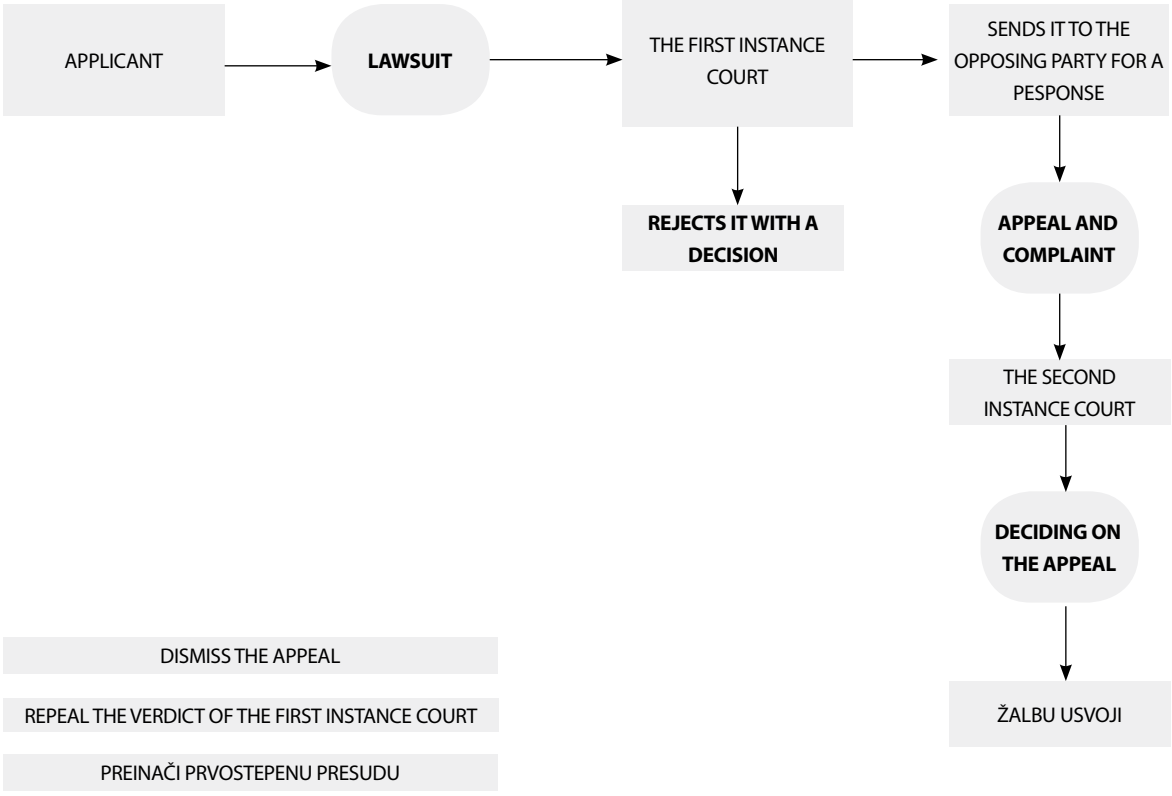
The source: Law on Civil Procedure, Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.

DIAGRAM 8.4. THE COURSE OF THE CIVIL PROCEDURE: PROCEDURE OF LEGAL REMEDIES



The source: Law on Civil Procedure, Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.

DIAGRAM 8.5. THE COURSE OF THE CIVIL PROCEDURE: PROCEDURE ON THE APPEAL



The source: Law on Civil Procedure, Official Gazette RS 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court and 55/2014.