

de parte, hecha dentro del tercer día, así lo declarará, mandando poner el expediente en Secretaría para la presentación de memoriales en los términos del artículo 246 del CPCON (esto es, los memoriales del recurso en relación).

a) A la inversa, si el recurso no hubiera concedido en relación delictiva sería ilusorio, la Cámara dispondrá el cumplimiento de lo dispuesto en el artículo 260 del CPCON, es decir, todas las medidas relativas a hechos nuevos, a documentos nuevos, a pruebas, que hayan existido.

b) En cambio, la objeción sobre el efecto del recurso corresponde a la queja (art. 284, CPCON). Este sistema diferenciado es inconveniente y complejo, sin necesidad alguna.

16. Descripción del recurso

El recurso puede declararse desierto (es decir, dejarlo sin efecto) si no se cumple con ciertas cosas. El caso general para el recurso libre y aplicado a los otros tipos es el previsto en el artículo 260 del CPCON: si el apelante no expresa agravios dentro del plazo o no lo hiciera en la forma prescrita en el artículo anterior (cálculo concreto y razonado, etc.), el tribunal declarará desierto el recurso, señalando, en su caso, cuáles son las motivaciones esenciales del pronunciamiento desfavorable que no han sido eficazmente rebatidas.

a) En el caso de la apelación en relación con efecto suspensivo, si el apelante no presenta memorial, el juez de primera instancia declarará desierto el recurso (art. 246, CPCON). Le corresponde a la Cámara declarar desierto por no cumplir con los requisitos de contenido.

b) Lo mismo prevé el artículo 250, inciso 3° del CPCON para la apelación en relación con efecto devolutivo: se declarará desierto el recurso si dentro de quince días de concedido el apelante no presenta las copias que se indican en este artículo, y que estuvieron a su cargo. Si no lo hiciera el apelado, se presumirá de ellas.

c) En el caso de apelación ordinaria ante la Corte Suprema (art. 280, tercer párrafo, CPCON), la falta de presentación del memorial o su insuficiencia traerá aparejada la deserción del recurso.

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a) *Diferencias entre inapelabilidad e irrecursibilidad.* No debe confundirse esta situación (inapelabilidad) con otra que contempla el Código Procesal (el recurso) la ha restringido bastante), que es la irrecursibilidad de ciertas decisiones.

El término *irrecursible* es mucho más amplio que el término *inapelable*. Así, mientras una resolución inapelable no admite el recurso de apelación, una resolución irrecursible no admite ningún tipo de recurso. Ejemplo de ello lo encontramos frente a la resolución del juez que establece el tipo de proceso aplicable a una cuestión (art. 319, CPCON; id. CPCOBA), o bien la resolución que rechaza las excepciones en la ejecución de una sentencia, cuando no se acompaña la documentación pertinente (art. 307, CPCON; art. 300, CPCOBA). En todos estos casos también son excepciones frente a resoluciones que no admiten ser recurridas, pero en razón de la amplitud de la restricción impuesta por el legislador, que no admite ni la apelación ni ningún otro recurso.

b) *Requisitos del procedimiento.* Es importante destacar que la revisión de todos los requisitos que toman procedencia al recurso de apelación, requiere de la observancia de aquellas específicas que hacen a este recurso, como el plazo y la forma.

1) En cuanto al plazo de interposición dependerá del proceso y del ordenamiento. En el proceso civil y comercial nacional el plazo general es de cinco días, que se cuentan a partir del día siguiente al de la notificación. En otro tipo de procesos debe estar a la par la norma respectiva. Así, en el proceso sumariísimo nacional el plazo es de tres días (art. 498, inc. 2°, CPCON; art. 494, CPCOBA), pero en el supuesto de la ley 56.960, el plazo es de 48 horas (art. 17) y en el ordenamiento laboral, el plazo para apelar contra la sentencia definitiva es de 6 días, oportunidad en la que también debe hacerse (ley 18.243).

2) La forma de deducir la apelación tiene que ver con la modalidad de su introducción en el proceso. Si el sistema dispone que el recurso se actúa en dos actos, tal como sucede en el Código Procesal Nacional y los que siguen su sistema, el modelo funciona de la siguiente forma:

d) En el recurso de inapelabilidad de la ley (art. 292) se establece que en el escrito en que se le deduce se señalará la existencia de la contradicción en términos precisos, se mencionará el escrito en que se invocó el precedente jurisprudencial y se expresarán los fundamentos que, a juicio de la parte, demuestran la procedencia del recurso. El incumplimiento de estas reglas determinará su inadmisibilidad.

e) La regla general del recurso libre prevista por el artículo 260, segunda parte del CPCON es aplicable a todos los demás casos: "Declarada la deserción del recurso la sentencia quedará firme para el recurrente".

f) A la inversa, la falta de contestación del recurso no causa efecto alguno, pues la sentencia se mantiene hasta tanto haya sido revocada. El apelado puede o no contestar al le proceso.

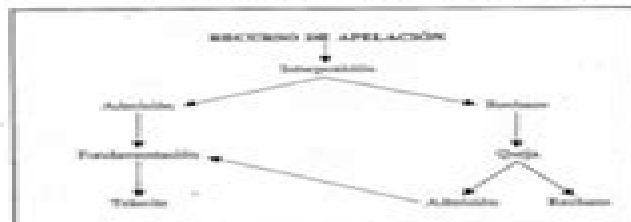
17. LA PRÁCTICA DEL RECURSO

17.1. Apelabilidad y recurribilidad.

El escrito de apelación

La posibilidad de apelar una resolución se funda en primer lugar en que la misma sea apelable conforme con su naturaleza (por ejemplo, no son apelables las providencias simples que no causan gravamen irrevocable). Pero también la apelabilidad tiene en cuenta el *ámbito* procesal, que puede permitir sólo la apelación de algunas resoluciones (v. gr., procesos sumarios o sumariísimos, procesos concursales, laborales, etc.), ya que la regla de la apelabilidad amplia sólo existe en el proceso ordinario. El Código Procesal establece además en forma específica otros casos de inapelabilidad, que siempre se desprenden de su propia letra, así, a modo de ejemplo, podemos señalar la resolución que admite la intervención de terceros (art. 96, CPCON; id. CPCOBA), la resolución que destruye la unidad de instancia (art. 317, CPCON; id. CPCOBA), la que admite el hecho nuevo (art. 366, CPCON; art. 364, CPCOBA), la referente a la producción, designación o sustitución de medios probatorios (art. 376, CPCON; art. 377, CPCOBA), etcétera.

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3) En tal sentido el artículo 245 del CPCON (id. CPCOBA) señala que el recurso podrá interponerse tanto verbalmente como por escrito. Puede llamarse la atención la primera forma de interposición, aunque es necesario señalar que en caso de haberse deducido el mismo en forma verbal, el secretario deberá dejar constancia en autos a través de un acta que se labrará al efecto. Como ejemplo de lo que venimos exponiendo puede ser del tenor en cuanto la modificación introducida por la ley 24.573 al artículo 360 del Código Procesal, que instauró la audiencia preliminar. En esta situación no resultaría improbable que se dedujera verbalmente una apelación, en oportunidad de celebrarse dicha audiencia, sobre todo teniendo en cuenta el silencio que la norma le ha dado (expresión como en el supuesto de fijación de los hechos). No obstante ello, tanto en uno como en otro supuesto el apelante se debe limitar a la sola interposición del recurso, señalando debidamente que apela la resolución que le agravia. Esto nos permite diferenciar dos momentos absolutamente claros en el recurso de apelación, que son el de la interposición del recurso, que es el que venimos adelantando, y otro posterior que tiene que ver con su fundamentación.

a) *Interposición del recurso.* De esta manera el recurso se interpone con el siguiente escrito.

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Ejercicio De Abogacia El Tomo Ii

Arturo Cuomo



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