

Conduct of Civil Proceedings in Higher Courts

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Abstract: This article examines the conduct of civil proceedings in higher courts, particularly appellate and cassation courts. It provides a comparative overview of procedures in developed countries and analyzes the legal framework and practice in the Republic of Azerbaijan. The paper discusses the significance of higher judicial instances in ensuring the correct application of law and the protection of individual rights. Special attention is paid to procedural guarantees, judicial discretion, and issues of accessibility and efficiency. The study concludes with findings on the effectiveness of the current system and offers recommendations for improvement.

Keywords: *civil procedure, appellate court, cassation court, higher courts, judicial review, Azerbaijan, due process*

1. INTRODUCTION

The administration of justice in civil matters relies on a multi-tiered court system, where higher courts play a crucial role in reviewing decisions made by lower instances. These higher courts, primarily appellate and cassation bodies, serve to correct errors of law and fact, ensure the consistent application of legal principles, and ultimately uphold the rule of law. The procedures governing the conduct of civil proceedings at these levels are distinct from those in trial courts, emphasizing the review of existing records and legal arguments rather than the presentation of new evidence. This article aims to explore the conduct of civil proceedings in higher courts, providing a comparative perspective by examining practices in developed countries before focusing on the specific context of the Republic of Azerbaijan. Understanding these processes is vital for legal practitioners, policymakers, and individuals seeking recourse within the judicial system.

In accordance with Article 4 of the Civil Procedure Code of the Republic of Azerbaijan, all individuals and legal entities have the right to use judicial protection in the manner prescribed by law in order to protect and ensure their legally protected rights and freedoms, as well as interests. The denial of the

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right to apply to the court is invalid. Thus, a lawsuit is one of the main means of initiating civil proceedings in a particular case, that is, it is the lawsuit that launches the mechanism of judicial protection and administration of justice (Garibli, 2025).

2. HIGHER INSTANCE (APPELLATE AND CASSATION) COURTS IN DEVELOPED COUNTRIES: A CLOSER LOOK AT THE UNITED STATES, THE UNITED KINGDOM, FRANCE, AND GERMANY

Developed countries often exhibit well-established and nuanced systems for handling civil appeals and cassation. While specific procedures vary across jurisdictions, some common characteristics and distinctions exist between appellate and cassation courts.

Appellate Courts: Our present-day appellate system can be retraced to Pharaonic Egypt: administrative and civil suits could be brought before local administrators, whose decisions could be appealed before the *nomarchs*, higher judges of the 42 judicial districts. In turn, their decisions could be appealed before the pharaoh, in Alexandria. The rationale was that both administrators and nomarchs ruled in name of the pharaoh. Their reaching a wrong decision would bring ‘dishonor’ upon him, so a corrective had to be put in place. The benefits of this system were evident: the ruler would keep in touch with a sample of everyday life problems from all over his territory, while a single legal order would exist all over this territory, bringing legal certainty and facilitating trade. By the Late Roman Empire, the procedure was part of the standard practice, as is shown by Chapters 1–13 of Book XLIC of the Digests of Justinian which lay out the rules in a considerable degree of detail (Blockx, 2018).

Proceedings in the Court of Appeal have a long history. In Roman law, the prototype for an appeal was a procedure called an appeal, whereby a party who disagreed with a court decision could appeal to a higher court to veto an unjust decision. With such a veto, the decision could be completely canceled or its effect stopped. In European law (e.g. France, Germany) an appeal is a common and usual method of appeal against court decisions based on and under the influence of Roman law in the field of civil jurisdiction. The term "appeal" comes from the Latin word *appellatio* and means appeal, complaint. Thus, in France, ordinary and extraordinary methods of appeal from court decisions in civil cases are legally distinguished, the first of which includes an appeal (Article 527 of the French Code of Civil Procedure). In relation to the English judicial system, the appellate institution is the only method of reviewing court decisions by filing a complaint with the relevant court (Garibli & Ozturk, 2024).

Generally, appellate courts review decisions of lower courts on both questions of law and fact. They typically examine the record of the trial court, including transcripts, evidence presented, and legal arguments made. Some jurisdictions allow for the introduction of limited new evidence under specific circumstances. The process usually involves the submission of written briefs by the parties outlining their arguments and the alleged errors in the lower court's decision. Oral arguments may also be permitted, providing an opportunity for lawyers to address the court directly and answer questions.

Cassation Courts: The concept of the cassation institution was first established in the French judicial system (from the French *cassation* - annulment, destruction). According to the French Code of Civil

Procedure of 1806, the highest judicial instance, the cassation court, was authorized solely to review the conformity of judicial decisions with legal norms. Meanwhile, appellate courts, as second-instance courts, re-examined cases on their merits, investigated both factual and legal issues, and allowed for the submission of new evidence, ensuring its verification and evaluation. The cassation court, however, lacked the authority to resolve disputes on their merits. It could either uphold the lower court's decision as final or annul the decision and remand the case for reconsideration by a lower court (Garibli, 2024).

In contrast, cassation courts, primarily focus on questions of law. They do not typically re-examine the factual findings of lower courts unless there is a clear error of law in their determination. The role of cassation courts is often to ensure the uniform interpretation and application of the law across the judicial system. Proceedings in cassation courts usually involve the review of written submissions arguing that the lower appellate court made an error in its legal reasoning or application. Oral arguments may be less common than in appellate courts.

United States

The United States operates a common law system with a federal structure comprising trial courts (*District Courts*), intermediate appellate courts (*U.S. Courts of Appeals*), and the Supreme Court as the highest judicial body. The Courts of Appeals conduct a comprehensive review of both legal and factual matters. Appeals are a matter of right, and judges decide cases in panels, typically based on written briefs and oral arguments (Zuckerman, 2013).

The *U.S. Supreme Court* functions similarly to a cassation court in civil law countries by focusing on legal questions of broad constitutional or federal significance. It exercises discretionary jurisdiction through writs of certiorari, reviewing only a small fraction of petitions (Jolowicz, 2000).

United Kingdom (England and Wales)

The United Kingdom, also grounded in the common law tradition, features a hierarchical structure with the High Court and County Courts at the first level, the *Court of Appeal* (Civil Division) as the appellate body, and the *UK Supreme Court* as the final instance (Cappelletti, 1971).

Appeals to the Court of Appeal may include legal and limited factual matters, subject to permission. The UK Supreme Court focuses on cases involving general public importance and aims to develop coherent and consistent legal doctrines (Bell et al., 2004). Like in the U.S., its rulings serve as binding precedent throughout the jurisdiction.

France

France, a leading example of a civil law jurisdiction, features a sharply delineated court system. Civil proceedings begin in courts of first instance (*Tribunaux Judiciaires*), followed by *Cour d'Appel*, and ultimately the *Cour de cassation*, the highest court in civil and criminal matters (Merryman & Pérez-Perdomo, 2007).

The *Cour d'Appel* conducts a full review of both fact and law. In contrast, the *Cour de cassation* only reviews whether the law has been correctly interpreted and applied. It does not re-evaluate factual findings. Its decisions do not formally bind lower courts but have strong persuasive authority and guide future judicial reasoning (Kélidoine, 2015).

Germany

Germany's civil law system is characterized by strict procedural formalism and a multilayered judiciary. Trial courts include *Amtsgerichte* and *Landgerichte*. Appellate review is conducted by *Oberlandesgerichte*, while the *Federal Court of Justice (Bundesgerichtshof)* operates as the cassation instance (Baum & Bälz, 1997).

The *Oberlandesgerichte* review both fact and law. The *Bundesgerichtshof* does not reassess facts, instead focusing strictly on legal interpretation. It ensures jurisprudential uniformity and provides authoritative guidance on legal norms. Though its decisions are not formally binding, they are widely followed (Koch, 2006).

Comparative Table

<i>Feature</i>	<i>United States</i>	<i>United Kingdom</i>	<i>France</i>	<i>Germany</i>
Legal tradition	Common law	Common law	Civil law	Civil law
Appellate court	Courts of Appeals	Court of Appeal	Cour d'Appel	Oberlandesgerichte
Cassation court	U.S. Supreme Court	UK Supreme Court	Cour de cassation	Bundesgerichtshof
Factual review	Yes (appellate level)	Limited	Yes (Cour d'Appel)	Yes (Oberlandesgericht)
Legal review	Supreme Court (selective)	Supreme Court	Cassation only	Cassation only
Access to highest court	Discretionary (certiorari)	Leave to appeal	On points of law	Based on legal criteria
Precedential authority	Binding	Binding	Persuasive	Persuasive
Reasoning style	Case-and Constitution-based	Precedent-focused	Statutory/legal logic	Doctrinal/codified logic

3. CONDUCT OF CIVIL PROCEEDINGS IN THE COURTS OF APPEAL AND CASSATION OF THE REPUBLIC OF AZERBAIJAN

The Republic of Azerbaijan has a multi-tiered judicial system for civil cases, including courts of appeal and a Supreme Court that functions as the court of cassation. The conduct of proceedings in these higher courts is governed by the Civil Procedure Code of the Republic of Azerbaijan.

Courts of Appeal: The Courts of Appeal in Azerbaijan review decisions of the first instance courts on both matters of fact and law. The process typically begins with the filing of an appeal within a specified timeframe. The appellate court examines the case materials submitted to the first instance court, as well as the arguments presented in the appeal. Parties are usually required to submit written appellate briefs outlining the grounds for appeal and the specific errors alleged in the lower court's decision. Oral hearings are generally held, allowing parties to present their arguments and respond to questions

from the appellate panel of judges. The appellate court has the power to uphold, amend, or annul the decision of the first instance court, and may also issue a new decision or remand the case for a new trial.

The law does not limit the appeal of court decisions that have not entered into legal force. Filing a complaint does not depend on the value of the claim, the value of the subject of the complaint, there is no rule of mandatory representation of the parties. In this sense, the appeal is allowed unconditionally and is limited only by time. The filing of an appeal by the authorized entity in compliance with the rules and time period established by law leads to the mandatory consideration of the case by the appellate instance. Any error in a court decision that has not yet entered into legal force may be grounds for its issuance. The significance of the appeal lies in the fact that when revising the case on the merits, the courts of appeal eliminate judicial errors made in individual cases in the lower courts as a result of checking court decisions, which contributes to the correct interpretation and application of laws by the courts of first instance, as well as the issuance of fair decisions. Courts of appeal instance prevent the possibility of repeating such errors when considering similar cases (Garibli & Ozturk, 2024).

The significance of the appeal institution in ensuring the principle of legality in civil proceedings is justified by the following arguments:

1. Appeal provides the fullest possible guarantee for the realization of citizens' right to judicial protection, as it allows for the reduction of judicial errors through the re-examination of the case;
2. Appeal enhances the effectiveness of the supervision exercised by the courts of the second instance over the activities of the courts of the first instance, since during appeal proceedings the court is not limited to checking only the reasoning and legality of decisions but can also re-examine the facts of the case and re-assess the evidence;
3. The introduction of appeal increases the efficiency and speed of the judicial process; as the appellate court is independent in making decisions, it can annul the decision of the court of first instance if necessary (Самсонов & Тахиров, 2017).

Court of Cassation (Supreme Court): The Supreme Court of the Republic of Azerbaijan acts as the court of cassation in civil matters. Its primary function is to review the legality of the decisions made by the courts of appeal. Grounds for cassation typically include significant violations of substantive or procedural law that have affected the outcome of the case. The Supreme Court generally does not re-examine the factual findings of the lower courts unless there is a clear indication of a misapplication of procedural rules during the fact-finding process. The process involves the submission of a cassation complaint outlining the alleged legal errors. While oral hearings can be held at the discretion of the court, they are less frequent than in the courts of appeal. If the Supreme Court finds that a legal error has been committed, it can annul the decision of the appellate court and either issue a new decision or remand the case to the appellate court for a re-examination in accordance with its instructions.

According to Article 403 of the Civil Procedure Code, the subjects entitled to file a cassation appeal primarily include the parties to the case, third parties, and in special proceedings, applicants and

interested parties whose claims have been denied. The appeal must be signed by the appellant (or their legal representative or attorney) and the lawyer who prepared the appeal. Individuals not involved in the case but whose interests are affected by the judicial act may apply to the Chairperson of the Supreme Court of the Republic of Azerbaijan regarding judgments and decisions of appellate courts. In such applications, it must be substantiated how the accepted judgment or decision infringes upon the person's rights and obligations or impacts their interests. A cassation appeal must be attached to the application. The object of a cassation appeal comprises non-final decisions of first-instance and appellate courts. According to Article 403 of the Civil Procedure Code, cassation appeals can be filed against appellate court judgments except in cases involving property claims where the disputed portion of the judgment is less than 5,000 AZN in civil cases or less than 10,000 AZN in commercial disputes (Garibli, 2024).

The grounds for annulment or modification of court decisions in the cassation instance are only substantial violations of substantive or procedural law. Substantial violations committed by the court are judicial errors that affect the stability of justice and are expressed in the failure to comply with the requirements of reasoned and lawful judicial rulings. Such violations are not limited to the non-observance of individual formal requirements; they always influence the outcome of the case and affect the lawful rights and interests of citizens (Дамбаева & Кирманбаев, 2019).

4. DISCUSSION

Comparing the conduct of civil proceedings in higher courts across developed countries and in Azerbaijan reveals both similarities and differences. In many developed legal systems, a clear distinction is maintained between the broad review powers of appellate courts and the more focused legal scrutiny of cassation courts. Azerbaijan's system aligns with this general structure, with the Courts of Appeal having the competence to review both factual and legal aspects, while the Supreme Court primarily concentrates on legal errors.

However, the specific procedural nuances can vary. The extent to which new evidence is admissible at the appellate stage, the frequency and nature of oral arguments, and the grounds for cassation all contribute to the unique character of each jurisdiction's system. For instance, some developed countries may have stricter limitations on the introduction of new evidence at the appellate level to ensure the focus remains on reviewing the trial court's proceedings. Similarly, the criteria for cassation can differ, with some systems emphasizing the need for a significant legal error that demonstrably impacted the outcome.

In the context of Azerbaijan, continuous efforts are being made to enhance the efficiency and transparency of civil proceedings in higher courts. This includes leveraging technology for case management and ensuring clear and accessible procedures for litigants. The ongoing development of the legal framework aims to align national practices with international standards and best practices in the administration of justice.

5. RESULTS

The comparative analysis highlights the common thread of ensuring legal accuracy and consistency through higher court review while also revealing variations in the scope of review and procedural specifics. Developed countries often exhibit a more pronounced separation of functions between appellate courts (review of fact and law) and cassation courts (primarily legal review). Azerbaijan's system reflects this general division, but the specific implementation of procedural rules and the extent of factual review at the appellate level warrant ongoing attention. The effectiveness of higher court proceedings in Azerbaijan hinges on clear legal frameworks, efficient case management, and the consistent application of procedural rules to ensure fairness and access to justice.

6. CONCLUSION

The conduct of civil proceedings in higher courts is a critical component of a robust legal system. Appellate and cassation courts serve as vital checks on the decisions of lower instances, safeguarding against errors and promoting the consistent application of the law. While the fundamental principles of review are shared across many jurisdictions, the specific procedures and the division of labor between appellate and cassation bodies can vary significantly. The Republic of Azerbaijan has established a framework for civil appeals and cassation that aligns with international norms, but continuous evaluation and refinement of these processes are essential to ensure efficiency, fairness, and public trust in the judicial system. Future developments may focus on further streamlining procedures, enhancing the role of technology, and ensuring greater clarity and accessibility for all participants in civil litigation at the higher court levels.

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