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Reconsideration of Civil Cases in the Courts of the Republic of Azerbaijan under Cassation Procedure

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Abstract

The importance of adjudicating cases and issuing final decisions in courts is multifaceted and encompasses several key aspects. Courts are one of the fundamental institutions that ensure the rule of law. They guarantee the proper application of laws and the fair resolution of legal disputes. Final decisions provide a legal guarantee for the protection of citizens' rights and freedoms. A court decision resolves the instability inherent in contentious legal relationships, establishing clarity, stability, and binding legal force. This creates a legal framework for the unhindered exercise of rights or legally protected interests, ultimately ensuring the defense of violated or disputed subjective rights. Violations of substantive or procedural norms may occur during the adjudication of cases in lower courts. Higher courts review the decisions of lower courts, not only correcting legal errors but also addressing complex legal issues. This article discusses the rules for the reconsideration and resolution of civil cases by higher courts—specifically, cassation courts.

1. Introduction

Proceedings in courts represent an essential and obligatory stage in any case, culminating in the act of justice—a judicial decision. However, during the administration of justice, it is impossible to exclude potential judicial errors, mistakes, or dissatisfaction with the decision, as well as doubts from the parties regarding the proper resolution of the dispute and the adequate protection of their rights and legitimate interests.

Procedural law grants interested parties the right to appeal judicial decisions to higher courts. Civil proceedings evolve through stages of review in accordance with the methods of appeal and examination of judicial decisions. Proceedings in higher courts aim to achieve the general objectives of civil procedure, ensuring fair judicial decisions and providing adequate judicial protection of rights and legitimate interests against possible judicial errors (Garibli & Ozturk, 2024).

2. The Concept of Cassation

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,



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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.

Alongside cassation proceedings, a review procedure for re-examining judicial acts also emerged, traditionally associated with the judicial processes in Germany and Austria. Under the review procedure based on German and Austrian legislation, the primary aim was to verify the legality of decisions, similar to cassation. However, unlike cassation, the review procedure allowed higher courts not only to annul unlawful decisions but also to amend them without remanding the case to the lower court. Thus, the fundamental distinction between review and cassation lies in the authority granted to higher courts to resolve disputes on their merits when the violations committed by lower courts are deemed insignificant (Vasilyev, 2010).

With the development of civil judicial proceedings, a convergence in the content of cassation and review methods has occurred, with the sole significant distinction being the prohibition on cassation courts from establishing new facts and issuing new decisions based on them.

Considering Article 60 of the Constitution of the Republic of Azerbaijan, which ensures the right to judicial protection for everyone, the institution of appellate review of non-final decisions of first-instance courts is enshrined in civil proceedings. However, the existence of this institution does not fully prevent judicial errors or guarantee that the judicial acts issued by first-instance and appellate courts will be entirely consistent with the current legislation. This is particularly true when contradictions or gaps exist in the normative legal regulation of the contested substantive legal relationship, and when legal norms are applied analogously by the lower courts.

The cassation institution, as a means of eliminating possible judicial errors and simultaneously guaranteeing the right to judicial protection, is governed by Chapter 43 of the Civil Procedure Code (CPC) of the Republic of Azerbaijan, which regulates cassation proceedings. Cassation proceedings, as a stage of civil procedure, involve the activities of the cassation court and the participants in the process in verifying the legality of decisions made by first-instance and appellate courts.

Thus, the cassation institution represents a collection of norms regulating the initiation of proceedings in the cassation court for the reconsideration of non-final judicial decisions made by lower courts, the procedures and scope of examining cassation appeals (or protests), the grounds for annulling contested judicial decisions due to illegality, and the powers of the cassation court (Blazheev & Uksusova, 2015).

Friedrich Stein and Rudolf Schütze emphasize in their work that the cassation instance in European law is the final authority ensuring the legality of judicial decisions. This serves as a fundamental component of legal security and ensures uniform judicial practice (Stein & Schütze, 2017).

Cassation proceedings have developed as a mechanism to rectify legal errors in judicial decisions. A. K. Sergeev notes that the cassation instance aims to correct legal violations committed by first-instance and appellate courts. He states that cassation courts focus on legal errors rather than factual matters (Sergeev, 2020).



The main distinction between cassation proceedings and appellate review lies in their scope: cassation review is limited to verifying the legality of decisions that have not yet acquired legal force (Shaklein, 2021).

The purpose of cassation proceedings is to eliminate judicial errors that remain uncorrected during appellate review. The cassation instance addresses significant violations of substantive or procedural legal norms committed during the examination and resolution of cases in the first-instance and appellate courts. It ensures the legality of judicial decisions and promotes uniformity in the interpretation and application of laws by lower courts (Treushnikov, 2020).

3. **The Right to Appeal to the Cassation Court (Subject, Object, Address, and Term of the Appeal)**

The right to file a cassation appeal arises only if the following prerequisites are met:

- if the subject is granted such a right by law;
- if the object (court resolution or decision) can be appealed to the court of cassation instance in the manner established by law;
- if the term established by law for filing a cassation appeal has not been set (Treushnikov, 2020).

The right to appeal to the court of cassation instance is an important part of the legal process, allowing citizens and other legal entities to appeal in cases where they consider that the decisions of lower courts do not comply with the legislation. This right is one of the main procedural means that further improve judicial acts and guarantee the fair application of law. The basic elements of the right to appeal in cassation are determined by the subjects, objects, the court to which the appeal can be made, and the terms provided for the exercise of this right.

The initiation of proceedings in the court of cassation instance is carried out by filing a cassation appeal or protest. The right of cassation appeal is the opportunity granted by law to participants in civil proceedings to file a cassation appeal or protest with the court of cassation instance against decisions of the courts of first instance and courts of appeal that have not entered into force (Yarkov, 2021).

According to Article 403 of the Civil Procedure Code (CPC), 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.

When the prosecutor is the plaintiff or applicant in judicial proceedings, they are entitled to file a protest. According to the Plenum of the Constitutional Court of the Republic of Azerbaijan's decision dated April 3, 2023, a prosecutor may act as a party in civil proceedings as a plaintiff or applicant to defend state interests, provided there is a relevant request from state authorities, organizations, or legal entities



established by the state or with the state as the founder (Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan, n.d.). Only in such cases may the prosecutor file a protest against judicial acts. A prosecutor's protest submitted to the cassation court regarding a case they participated in is equivalent in legal essence and consequences to a cassation appeal.

The object of a cassation appeal comprises non-final decisions of first-instance and appellate courts. According to Article 403 of the CPC, 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.

A cassation appeal may be filed against the rulings of the civil and commercial boards of the courts of appeal on declaring an appeal impossible, on returning a cassation appeal, on refusing to restore the deadline for filing a cassation appeal, on terminating the proceedings on the case, on sending the case for consideration on the basis of its jurisdiction, and on canceling the ruling on accepting the case for consideration and returning the case to the court of first instance with the exclusion of the case from the appeal review on the grounds that the appeal was accepted for consideration contrary to the requirements of the CPC.

A cassation appeal may also be filed against the rulings of the courts of first instance on the jurisdiction of the court and the ruling on returning the appeal filed against those rulings.

A cassation appeal may be filed against the resolutions and rulings of the civil boards of the courts of appeal to the Civil Board of the Supreme Court of the Republic of Azerbaijan, and against the resolutions and rulings of the commercial boards of the courts of appeal to the Commercial Board of the Supreme Court of the Republic of Azerbaijan.

A cassation appeal against a resolution of the court of appeal may be filed within two months from the date of its official delivery to the persons participating in the case, and against a ruling—within 10 days from the date of its official delivery to the persons participating in the case.

Cassation appeals must be filed in written form through the appellate court. If a cassation appeal is submitted directly to the cassation court, the court will forward the appeal to the appropriate appellate court to ensure compliance with the procedural requirements established by law.

4. Procedure for Reviewing a Cassation Appeal

A cassation appeal submitted in accordance with all legal requirements is admitted for review by the cassation court. The review process consists of two stages:

a. Preliminary Examination: Upon receiving the case, the cassation court examines the admissibility of the appeal within 15 days. This involves verifying the procedural grounds for reviewing the case in cassation. If procedural grounds are lacking, the court issues a resolution deeming the appeal inadmissible. If the appeal is admitted, the judge of the cassation court issues a resolution confirming its acceptance. Before the resolution is sent to the parties involved, if the appellant submits a written request to withdraw the appeal, the cassation court issues a resolution to return the appeal.

b. Hearing of the Appeal: The cassation appeal is then reviewed by the respective chamber of the Supreme Court of Azerbaijan—either the Civil or Commercial Chamber—depending on the nature of the case. For



appeals against judgments, the review must be conducted within three months from the date of submission. For appeals against resolutions, the review must be completed within one month. The review is typically conducted in written proceedings, but if deemed significant for the development of the law or ensuring consistency in judicial practice, the court may decide to conduct a hearing, notifying the parties accordingly.

Parties to the case, their representatives, and lawyers are notified about whether the review will be conducted orally or in writing, as well as the time and location of the hearing, if applicable. If a notified party fails to appear at the hearing without a valid excuse, the court proceeds with the review in their absence. The presiding judge announces the case and the cassation appeal being reviewed. The attendance of the parties is verified, along with the identification and authority of legal representatives.

The composition of the court is announced, and parties may raise concerns regarding the judges' impartiality. The presiding judge or a designated judge delivers an opening report on the case. The appellant and their representative present their arguments, followed by the opposing party. The court deliberates and decides by majority vote, either on the spot or in a private consultation room. Judges in the minority may record a dissenting opinion, which is added to the case file. The decision is announced by the presiding judge or another judge.

The cassation court reviews the case within the bounds of the cassation appeal, focusing solely on the proper application of substantive and procedural laws by the appellate court. It does not examine factual matters but instead assesses whether legal norms were correctly interpreted and applied. Yarkov (2021) emphasizes that cassation courts adhere strictly to procedural rules and make decisions exclusively on legal violations.

Hess (2020) analyzes the cassation instance's limited powers in European law and examines the principle of expeditious review of appeals. The cassation court should not discuss factual matters and must focus solely on legal aspects.

5. Powers of the Cassation Instance Court

The powers of the court refer to the procedural rights granted to the court in relation to the decision contested, based on the outcome of the appeal being reviewed (Blazheev & Uksusova, 2015).

According to Article 417 of the Civil Procedure Code (CPC), the powers of the appellate instance court are as follows:

1. The appellate instance court can uphold the decision or ruling without making any changes or granting the appeal.
2. The appellate instance court can amend the decision or ruling.
3. The appellate instance court can partially or fully annul the decision or ruling and send the case back to the appellate instance court for reconsideration.
4. The appellate instance court can annul the decision or ruling partially or completely and make a new decision based on the established facts and evidence in the appellate instance court.
5. The appellate instance court can annul the decision or ruling partially or fully and, in cases provided by the CPC, leave the claim unresolved or terminate the case.



6. If it is determined that a case cannot be re-examined in the relevant appellate instance court, the court may refer the case to another appellate instance court for consideration.
7. If a cassation appeal is accepted for review in violation of the CPC's requirements, or if, after its acceptance, other parties appeal to the appellate court with their own cassation complaints, the court may revoke the acceptance decision and return the case to the appellate instance court by removing it from cassation review.

If the cassation appeal is groundless and the contested court decision is lawful, without any basis for annulment, the cassation instance court will uphold the decision, rejecting the cassation appeal and objections.

The violation or incorrect application of substantive and procedural law, including the violation of consistency in case law regarding the application of substantive and procedural law, constitutes grounds for the annulment of the appellate instance court's decision or ruling. Substantive law is considered violated or incorrectly applied if the first instance court makes an error in applying the law, fails to apply the relevant law or other normative legal acts, or misinterprets the law.

Procedural violations can be divided into two groups. The first group includes procedural violations that do not always lead to the annulment of the decision. These are referred to as conditional grounds for annulment of the decision. A violation or incorrect application of procedural law can only lead to the annulment of a decision or ruling if it causes the adoption of an incorrect decision or ruling. The second group of procedural violations includes those that always result in the annulment of the court's decision (Treushnikov, 2020). These are usually referred to as unconditional grounds for annulment.

Regardless of the evidence presented in the appeal, the decision or ruling of the first-instance court must be annulled in the following cases:

1. The case was considered by a judge who had no authority to do so.
2. The case was considered by the court without the participation of any parties who were not properly notified of the time and place of the court session.
3. The rules regarding the language of proceedings were violated during the case consideration.
4. The court resolved an issue concerning the rights and duties of persons not involved in the case, which resulted in a violation of their rights.
5. The decision or ruling was not signed by the judge indicated in it.
6. The decision or ruling was not adopted by the judge handling the case.
7. There is no protocol of the court session, or it was not signed.
8. The case was considered by the court on its merits when there were grounds under the CPC for leaving the claim unresolved or for terminating the proceedings.
9. The case was considered in violation of territorial or court jurisdiction rules.



The presence of these circumstances should be regarded as a gross violation of procedural norms by the first-instance court.

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