YEREVAN STATE UNIVERSITY

FACULTY OF LAW

MATERIALS OF THE CONFERENCE DEVOTED TO THE 85TH ANNIVERSARY OF THE FACULTY OF LAW OF THE YEREVAN STATE UNIVERSITY

Yerevan
YSU Press
2018

UDC 378:340:06

The present publication includes reports presented during the Conference devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

This publication can be accessed online by the following address:
http://ysu.am/files/Law_faculty_English_book_85.pdf

ISBN 978-5-8084-2326-8

Contents

PECULIARITIES OF JUDICIAL ACTS APPEAL AND CASSATION REVISION IN CRIMINAL PROCEDURES

Tatevik Sujyan[1]

The regulation of the judicial review institute in the field of criminal justice is designed to guarantee the person's right to appeal the verdict against him and to review it as guaranteed by international judicial documents[2], and the fundamental right guaranteed by Article 69[3] of the Constitution of the Republic of Armenia.

In the general theory of criminal proceedings, two main (classical) forms of judicial acts are used[4], which are defined as "review" (originated from the Latin word "appelarel", which means, appeal to the supreme judicial instance to substantially resolve the case) and "cassation" (from the Latin word "cassatio" or "casser" in French, which in means to break, to interrupt, to destroy, i.e. to

---

[1] Candidate of Legal Sciences, Assisting professor of the Chair of Criminal Procedure and Criminalistics of the Yerevan State University. E-mail: tatevsujyan@gmail.com

[2]See European Convention on Human Rights and Fundamental Freedoms of 1950. //http://conventions.coe.int/treaty/rus/treaties/html/005.htm (10.09.2014թ.), ICCPR (adopted by the Resolution ofhte UN General Assembly of 16.12.1966 # 2200 A (XXI), entered into force onn23.03.1976. https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/03/IMG/NR000503.pdf?OpenElement

[3]See the Constitution of Armenia with the Amendments as of 6 December 2015. //http://concourt.am/armenian/constitutions/index2015.htm

[4]Of course, the above-mentioned observation should be subject to certain reservations, as the separation of judicial acts' appellate and cassation review mechanisms is typical for the Continental or Roman-German legal system. Meanwhile, the term "cassation" is generally alien to the common law system and all possible forms of judicial acts are absorbed in the notion of "reflection" (review). Even in the same continental legal system, within the framework of the review carried out by the supreme judicial tribunal, two main models - the French cassation and the German revision - are separated. For more details see ***Sofie M.F. Geeroms***, Comparative law and legal translation. Why the terms Cassation, Revision and Appeal should not be translated. The American journal of Comparative Law, Vol. 50, No. 1, (Winter, 2002), pp. 201-228// available at: http://www.jstor.org/stable/840834?seq=1#page_scan_tab_contents

abrogate or to invalidate the lower court judgment)[1].

These two main forms of review of judicial acts have also been adopted in the Armenian judicial review system[2]. In general, referring to the history of the development of the national system of judicial review, it should be mentioned that both appeallate and the cassation reveiews existed in the criminal justice system of the First Republic of Armenia, which was abolished after Armenia became soviet republic. In the new emerging Soviet criminal procedure the Soviet cassation review was adopted, as a reviewing procedure. In the Soviet Armenia there was a two-tier court system - the People's Court-Supreme Court. People's courts a first-instance courts, examined not all criminal cases. A considerable part of them was examined by the Supreme Court, which simultaneously carried out review of judicial acts in the manner of cassation and supervisory proceedings.

The Constitution of the Third Republic of Armenia, adopted in

---

[1] See ***Գ.Ս.Ղազինյան***, Քրեական դատավարության պատմական և արդի հիմնախնդիրները Հայաստանում, Եր., Երևանի համալս. Հրատ., 2001, (G.S. Ghazinyan, Historical and Contemporary Issues of Criminal Procedures in Armeina. Yerevan, 2001) pp. 382-383, ***Калмыков В.Б***, Кассационное производство в уголовном процессе: Проблемы теории и правоприменения. Дисс…. канд. юрид. наук. Казань, 2010, (V. Kalmykov, Cassation proceedings in criminal proceedings: Problems of theory and law enforcement. Ph.D. Dissertation, Kazan 2010) pp. 11-40, ***Сухова О.А***., Кассационное обжалование судебных решений в Российском уголовном процессе, Дисс. …канд. юрид. наук, Саранск, 2004, (Sukhova, O.A., Cassation appeal of court decisions in the Russian criminal procedure. Ph.D. Dissertation, Saransk 2004) pp. 18-61, ***Строгович М.С.***, Уголовный процесс. - М.: Юридическое изд-во Министерства юстиции. СССР,1946, (Strogovich MS, Criminal procedure. - M .: Legal publishing house of the Ministry of Justice. the USSR. 1946) P. 450.
Sofie M.F.Geeroms, op. cit., ***J.A.Jolowicz,*** Appeal, Cassation, Amparo and all that: What and why?, pp. 2050-2051// http://biblio.juridicas.unam.mx/libros/2/643/26.pdf

[2] The Judicial Acts Revision System includes the following types of judicial acts reviewing, such as appellate, cassation, revision of judicial acts that have entered into force on the ground of a fundamental breach, or review of acts on the bases of emergence of new circumstances. In the light of this article, however, we will discuss only to two of these forms, namely the appellate and cassation review.

1995, envisaged a three-tier judicial system, and the original edition of the Criminal Procedure Code of the Republic of Armenia, adopted in 1998, envisages four types of criminal proceedings of reviewing the judicial acts: appellate, cassation, supervisory (review of the judicial act, which has entered into legal force on the basis of procedural or material law violations) and review of cases on the basis of newly emerged circumstances. The judicial review system of the Third Republic of Armenia has been subjected to a new legal regulation both in institutional and functional terms.

Reflecting on the mechanism of the judicial review of the judicial acts as envisaged by the current Criminal Procedure Code of the Republic of Armenia, the characteristics of this type of review the possibility of the investigation of evidence, including the possibility of referring to a new and factual aspect of the case can be mentioned. These peculiarities of the Appellate Review Mechanism are operative in relation to the RA Court of Appeal's jurisdiction, as defined by the Constitution of the Republic of Armenia, as amended on December 6, 2015, according to which the appellate courts are instance for reviewing the judicial acts of courts of first instance.

The main judicial instance functioning in the criminal proceedings of the RA is the Court of Appeals, since the Court of Cassation may review only reasonably limited number cases, conditioned only by the neceesity of ensuring the uniform application of normative legal acts and the elimination of fundamental violations of human rights and freedoms[18]. will be discussed in detail below. The authority to make a final judicial act on the bases of fact is reserved to the Court of Appeals.

However, not all the criminal-procedural regulations are consistent with the role of the Court of Appeals as a second tier, and do not create sufficient legal grounds for the effective exercise of the right to judicial protection by the Court of Appeals. In this respect, the current legislative regulation seems to be unlawful when the

Court of Appeals is authorized to carry out review of cases in cassation mode. This is ungrounded departure from the most important requirement for the clear separation of the functional role of different instances of revision and clearly contradicts the new constitutional status of the Court of Appeals.

In particular the aforesaid relates to the Article 390 (1) of the Criminal Procedure Code of the Republic of Armenia according to which the examination of cases in the Court of Appeals is conducted in accordance with the of appellate review, as well as in accordance with the rules set out for the review of cases by the Court of Cassation. The Cassation Court's interpretation issued the case of G. Hakhnazaryan on 29 June 2009 resulted in the existence of two parallel legal regimes of review of the appeal in the Court of Appeal: appellate and cassation, the qualitative difference of which, for example, the mandatory participation of the parties, opportunity to examining new evidence, is obvious.

Although the same decision has been made to define certain criteria for each of these regimes, nevertheless, regardless of these conditions, the opportunity to review cases in the cassation mode by the Court of Appeals in itself is in conflict with the original mission of that court. Therefore, it is not accidental that the new draft Criminal Procedure Code has rejected this regulation. Considering the peculiarities of the appellate review mechanism (unlike other mechanisms, the possibility of adding new evidence in the case and thus the factual review of the case), the draft law establishes a different procedure for the proceedings based on the appeal.

Specifically, if in line with the general regulations the failure to attend the proceedings is not an obstacle to the court hearing on the basis of a complaint, the appellate complaintant’s participation in the trial is mandatory (Article 374, Part 1 of the draft). By the court decision, the participation of other participants of the proceedings, including the prosecutor, may be deemed compulsory by the Court’s

decision. Moreover, in the event when the person, who submitted the appellate complaint properly and in line with the formal requirements, or his/her authorized person misses two court sessions without a due reason, the appeal shall be left without examination (Article 374, part 2 of the Draft).

Regarding the peculiarities of the mechanism for reviewing the appeal, a particular interest should be devotd to the legislative regulation of boundaries of the appellate review. Interesting to mention that in the initial version of the of the current Criminal Procedure Code of the Republic of Armenia the appellate review had a revision (i.e., the revision body) nature, which technically meant that the Appellate Court was not limited by the scope of the appeal and could have examined each criminal case in full volume, as well as could examine additional evidence[1].

In the result of the 2007 legislative amendments (after the adoption of the acting RA Judicial Code), the full appellate review was replaced by limited appellate review, meaning when the court was heavily restrained by appeal. From this perspective, the mechanism of appeal has been adjusted to the new draft Criminal Procedure Code of the Republic of Armenia. Based on the legitimate idea that both limited and complete appellate reviews are extreme regulations, and considering both public and private interests the draft prescribes the possibililty of trespassing the boundaries of the appeal when the interests of the defendat require so (Article 361, paragraph 3, paragraph 2 of the second part).

The initials of the solution developed in the Draft contained also the elements of legal position by the Court of Cassation on the issue of the borders the appellate review, as expressed in the case of H. Martirosyan, the judgment of the Court of Cassation of July 13, 2011. The issue raised by the petitioner in the case relates to the sentence imposed on the defendants by the Court of Appeal.

[1] See G.S. Ghazinyan, op. cit., p. 390.

However pointing out the issue of jurisdiction, the Court of Cassation first touched upon the question whether the violation of the rules on jurisdiction of the case under Article 398 of the RA Criminal Procedure Code, which are bases for overturning the judgment, whether the Court of Cassation is competent to address that issuem in case when the issue was not subject to consideration in the lower courts and subsequently not subject to appeal?

After analyzing the fundamental legal significance of correct jurisdiction for the proper guarantee of access to justice, the Court of Cassation found that even in the absence of any consideration of the matters relating to the jurisdiction in the lower courts, the Court of Cassation must discuss the matter.

Developing the underlying idea developed by the Court of Cassation in the case of H. Martirosyan, the draft law defines the following grounds for departing from the boundaries of the appellate review by the Court of Appeal:

1) In case of circumstance that excludes criminal prosecution;

2) when it is discovered that a wrongful legal assessment of the offender's actions was made;

3) when there are grounds for unconditional revocation of the judicial act prescribed by the Draft;

4) It is found out that the accused has been assigned a type or size/duration of punishment is not prescribed by thelaw for the offense he was charged with.

5) The grounds for the annulment or amendment of the appealed judgment is also relevant to the defendant who did not appeal the judicial act (Article 372, part 1 and Article 390, Part 2).

The adequacy of this regulation in the draft is justified by the fact that the grounds for departure from the boundaries of the appeal in the appellate (cassation) review are somewhat identical to the grounds for the review of judicial acts already in force in case of a fundamental violation (Article 409, Part 2 of the draft), in which case

it is legitimate even to retreat from such a crucial legal value as the principle of stability of judicial acts.[1]

As regards the cassation review of the judicial acts, one can distinguish several models which are different from one another. For example, the mechanism of cassation review was introduced to the judicial system by the adoption of the Criminal Procedure Code in 1998, as G.S. Ghazinyan states, the cassation of judicial acts was the synthesis of the revision of judicial acts, which entered into legal force, of the first instance and appellate courts.

The above-mentioned observation was based on Article 403 of the Code, under which the Court of Cassation was empowered to review the judicial acts of the Court of Appeals, which had not come into legal force, as well as the judicial acts of Court of First Instance and the Court of Appeal, which had come into legal force. This model was upheld until the Amendment to the Code by Law #ȥO-152-N of July 7, 2006, when it was envisaged to appeal the judicial acts of the Court of First Instance and the Court of Appeals, which had come into legal force, within six months to the Cassation Court.

This model operated until January 1, 2009, when it was envisaged to appeal the judicial acts of the Court of Appeals, which both substanrtively resolving and non-resolving for the case, to the to the Court of Cassation. At the same time, the same HO-152-N law also stipulated a discretionary procedure for acceptoing cassation appeals, deriving from the function of ensuring the uniform application of the new law by the Cassation Court, which, however, was, in practice, subjected to various interpretations.

Thus, in accordance with Article 92 of the Constitution of 27 November 2005, the supreme judicial body of the Republic of Armenia, besides the matters of constitutional justice, is the Court of Cassation, which is to ensure the uniform application of the law. The

[1] The same regulations have been envisaged with regard to the boundaries of Cassation review.

issue of the correlation between the functioning of justice and the uniform application of the law in the Court of Cassation was extremely up-to-date due to the above-mentioned norm. Thus, it was not clear whether the Cassation Court was exercising justice to ensure the lawful application of the law or vice versa.

And perhaps the idea of a transition from a three-stage system to a two-dimensional one, which was originally considered the constitutional reform conception, was conditioned by the disputed legal status of the Court of Cassation. The clarification of the correlation of the functions discussed is closely linked to the two main issues faced by the cassation review mechanism: a problem of correcting judicial errors and a reasonable balancing of the uniform application of the law. While these issues are not mutually exclusive, making an obvious advantage of them can lead to a disproportionate restriction.

Thus, the constitutional legal function of ensuring uniform application of the law has brought to the enshrinement of a permissive (discretionary) cassation appeal of judicial acts. Nevertheless, a question arises whether effective implementation of this function should be considered as a priority and to ensure its realization, even at the expense of the justice interests. By the December 6, 2015 amendments to Article 171 (2) of the RA Constitution, a balanced regulation, according to which the Court of Cassation ***ensures the uniform application of laws and other normative legal acts***, eliminates the ***fundamental violations*** of human rights and freedoms.

The interpretation of the constitutional status of the Court of Cassation is that the legal regulation of the grounds for adjudication should be carried out in a way to exclude the selective justice in cases where it relates to judicial errors in cases of fundamental rights and lawful interests of a person. To ensure a reasonable balance between the functioning of the law and the exercise of justice in the activities

of the Court of Cassation, discretionary procedure of admission of complaint must continue as a safeguard for the effective implementation of the uniform application of the law.

Adoption of high-quality judicial precedents would be more than impossible if all complaints were accepted and substantiated, considering the overload of the Court of Cassation (the Criminal Chamber) and the limited number of judges. On the other hand, the complaint on the grounds of error in judicial proceedings relating to the fundamental human rights and freedoms should not be excluded from the scope of the proceedings, to ensure the implementation of justice by the Court of Cassation.

The model of balanced regulation proposed by the Draft, in which a complaint is admissible if the Cassation Court's decision on the matter raised in the complaint may have implication for the uniform application of the law or if there is any gross judicial error, irrespective of the uniform application, is the incorporation of the said constitutional requirements.

The discretionary procedure for the admission of the cassation appeal is also prescribed by the RA Criminal Procedure Code, but the shortcomings of the existing procedures are that they provide too wide grounds for the complaint based on the judicial error, excluding the possibility of the Court of Cassation's discretion. Moreover, both the current Code and the Draft clarify the cases of admissible proceedings on the basis of the uniform application of the law, which in particular refer to the lower courts in at least two judicial acts in different cases (proceedings) against the same norm, contradicting as well as appealing application of a specific provision in a judicial act that contradicts the interpretation given in the judgment of the European Court or the Constitutional Court or the Court of Cassation. The development of the law in relation to the appealed judicial act, under the premise of ensuring the uniform application of the law, is an independent ground for the appeal.

The qualitative difference of cassation from the appellate review is that the cassation review of judicial act is solely on the basis of a violation of the law. Of course, it is also difficult to imagine that limiting the case to a purely legalistic point of view (pure cassation) is difficult to imagine due to the impossibility of clear boundaries between the legal and factual aspects of the case. The review of the decisions of the Court of Cassation indicates that in the latter's case it can also be found in the case when the court has indirectly reviewed the factual aspect of the case. The study of the decisions of the Court of Cassation indicates that the court has indirectly reviewed the factual aspect of the case. In some cases, the Court of Cassation has substantially re-examined the conclusions of the circumstances under which a person's guilty verdict has been recorded, when there was a violation of the requirement of adequate assessment of sufficiency of evidence for the resolution of the case by lower courts. [1]

And as regards the procedural relationships between the appellate review and cassation as an authonomous stage of the criminal procedure, they are further regulated by the criminal procedural law. First, as an independent stage of the criminal procedure, the appellate review and cassation consist of two sub-stages of review of the judicial act based on the appellate (cassation) appeal and the consideration of the appellate (cassation) appeal by the Court of Appeals (Cassation Court). The Criminal Procedure Code of the Republic of Armenia (including the Draft) clearly defines the object of appeal of the court review, the grounds for lodging, the scope of the subjects entitled to appeal, the requirements for the form and the content, the procedural order of appeal.

Thus, the appellate (cassation) object of appeal is the judicial acts that substantively resolve the case and those which don’t. The

[1] See, among other things, Decisions ԵԱՔԴ/0009/01/13 and ԵԿԴ/0252/01/13 in cases of Nelli Apoyan and Ararat Avagyan and Vahan Sahakyan, of 18 December 2015 and 31 October 2014, Cassationn Court of RA.

Draft has regulates the mechanism of appellate review (cassation) was separated as a mechanism for reviewing the final judicial acts (those that resolve the case in essence) on the one hand, and on the other hand, a special review as an action by the Court of Appeal and the Court of Cassation for reviewing non-conclusive judicial acts (in the sense of existing criminal procedure code those which do not substantially resolve the case), however it is not appellate or cassation review.

At the same time, such regulation is not only a solution of the theoretical problem, but also has an important practical significance. This, in particular, is manifested in that, in parallel with the separation of the cassation and special review mechanisms in the draft, respective procedures for such mechanisms are envisaged. Thus, the draft defined a special review as a mechanism for reviewing non-final judicial acts, a simplified procedure for appeal and review of the appeal.

As for the deadline for lodging a complaint, a one-month deadline for the appellate appeal of the case is set aside from the moment of their announcement, and in the case of non-substantive judicial acts - on depriving a person of his / her liberty of (detention, prolongation of the term of detention, placement of a person in a medical institution) - a five-day period from the moment of the receipt of the respective judicial act, and for other judicial acts that do not substantially resolve the case - ten days. A cassation complaint against a substantive judicial act may be brought within a one-month period, and a for judicial acts, which do not resolve the case, within a 15-day deadline, unless the law provides otherwise. However, if the start of the period for appeal is calculated from the moment of publishing the judicial act, in case in the case of non-substantive judicial acts the term starts from the moment of receipt of the judicial act.

When referring to subjects entitled to bring cassation appeal, it

should be noted that the defendant, acquitted, their defenders and legal representatives, the victim, his representative, legal representative and successor, the prosecutor and the superior prosecutor (the latter have limitation with regard to the right of the appeal). Subjects with limited rights are the civil plaintiff, the civil defendant, their representatives, and the person who is not a party to the case if the verdict or decision relates to its interests. Since these subjects protect their own or represented property interests in criminal proceedings, the legislator limited their right to appeal only in respect of a civil claim.

With regard to the subject of Cassation appeal, the Criminal Procedure Code provides for immediate action by the RA Prosecutor General or his Deputies, and the interrogation of the participants of the trial (with the exception of criminal prosecution bodies) and the applicant's appeal, i.e., the procedure for appealing through the advocate. However, referring to the recent legislative regulation, the Constitutional Court found that in its March 15, 2015 judgment, ՍԴՈ-1196 that it created disproportionate social disparities for persons who are not entitled to free legal aid and are willing to exercise their rights individually.

The Criminal Procedure Law regulates the relations related to the end of the appellate (Cassation) appeal period. Particularly, the Appellate Appellate Tribunal ends with a decision on appointing a court session or a decision to leave the appeal without examination, if the time limit, subject and subject matter restriction of the cassation appeal has been observed.

Unlike the current Code of Criminal Procedure, the Draft legally establishes an opportunity to make a decision to return the appeal, if it does not comply with the form and content requirements. The cassation appealing stage ends by a decision of returning the cassation appeal (if it does not comply with form and content requirements), leaving the appeal without adjudication (if the time,

subject and object restrictions of the cassation appeal have not been observed), the cassation appeal is rejected (if the grounds for admitting a cassation appeal are insufficient for admitting the appeal), or a by a decision on adjudicating the cassation appeal.

One of the peculiarities of procedural legal relationships under the Draft is the provision of a possibility to file an additional appeal before the end of the petition period (Paragraph 2 of Article 361 of the draft law).

As the current Criminal Procedure Code, the Draft also states that the grounds and the facts of the appeal review are exclusively presented in the appeal and can not be amended or replenished during the legal proceedings (Article 361, Part 3). Consequently, the provision of additional appeal and the grounds for the complaint, as well as the fact that the basis of the appeal, as well as the legislative capability to supplement the arguments supporting them, are aimed at solving the problem of correction of judicial errors, one of the most important issues of the judicial review system. Under the prohibition of filling out the grounds of the appeal and the facts proving therein, the draft law promotes the legitimate interest of the parties to demonstrate due diligence to protect their rights. But at the same time taking into account the existence of a legitimate interest in correcting judicial errors, the Draft defines a serious counterbalance, in the form of an additional appeal.

With regard to the procedure of reviewing the judicial act based on the appeal, the sub-stage of the appeal review can be divided into two relatively independent parts, namely the preparation of the court session and the examination of the appeal at the court hearing. Preparation of a court session involves the determination of the date and time of the court session, the procedural relationship with the person who filed the complaint and the other parties to the proceedings

The qualitative difference of the appellate review and cassation

in the procedural sense of the appeal examination is the absence of the requirement for the mandatory participation of the parties, which is based on the difference that unlike the cassation during the appeallate review the court also examines the factual basis of the appeal. As far as the qualitative difference is concerned, there is also a possibility to examine evidence in the proceedings, including the possibility of presenting new evidence. Of course, the law provides certain conditions for the realization of the latter opportunity. Particularly, in accordance with Part 3 of Article 382 of the Code of Criminal Procedure, the parties have the right to submit new materials to the court for approval of the grounds for their complaint, as well as the other party's complaint, or to mediate the court witness or expert they have designated to make an examination, if they justify that they have not had the opportunity to present these materials objectively, to summon the witness or the expert, and to appoint a motion in the first instance court to make an expert examination training, or argue that the petition was rejected by the Court of First Instance was unfounded. Almost the same regulation is envisaged also in the Draft code. And these conditions are legitimate under a limited appellate review model when the circumstances have not been examined in the first instance court.

Reflecting on the powers of the court on to decide in the result of review, majority of such powers lead to leaving the judicial act unchanged and to refusing the appeal, reversing the judicial act and making a new judicial act, or forwarding the case to a new examination, to amend the judicial act. At the same time, the basis of exercise of each of the above-mentioned powers is the idea whether to what extent the higher courts posess necessary investigative tools to be able to make a judicial act on the spot without having to return a case for a new trial and pass a certain procedure to examine the case in the lower court.

According to the Code and the Draft, the Court of Cassation is

authorized to reverse the judicial act of the Court of Appeal and to grant the legal force of the first instance court ruling. The RA Constitutional Court in its Dec. 7, ՍԴՈ-720 Decision of December 11, 2007 touched upon the issue of legitimacy of granting the Court of Cassation such powers and has expressed a legal position that it is intended to exclude the constant circulation of judicial acts and thus to guarantee the most important right to consider the case within a reasonable timeframe.

With regard to the grounds for annulment or alteration of a judicial act, such are the breach of the material and/or procedural rights set forth in the appeal and confirmed as a result of the proceedings.

Summarizing the above, it can be stated that the criminal proceedings in the Republic of Armenia can be characterized **as a form of judicial review of judicial acts which did not come into legal force, on the basis of the right and fact, the substantial difference from the other main forms of review judicial acts, i.e. cassation, is the possibility of reconsidering the factual aspect of the case on the bases of additional evidence**. And these peculiarities of the appellate review have been reflected in the legal regulation of this stage of the criminal procedure. In particular, it refers to the subject matter of the objection, the legal opportunity to examine the evidence, the mandatory participation of the parties in the Court of Appeal trial.

As to the Court of Cassation, the Cassation Review Mechanism as a form of review of judicial acts, in contrast to other forms of judicial review, is characterized by the following features:

(1) is a discretionary form of review of judicial acts;

(2) It presupposes the review of judicial acts of the Court of Appeals that substantially solve the case and have not yet come into legal force;

(3) It presupposes the review of judicial acts solely on the

basis of law;

(4) has a special purposeful nature to ensure uniform application of the law.

In general, we can state that the review model provided for in the current Code, according to which the judicial acts of the first instance courts may be appealed to the Court of Appeals before becoming effective on the basis of fact and right, and the judicial acts of the Court of Appeals, which have already come into legal force can be appealed on the basis of the law to the Cassation Court, can truly be considered as a full implementation of the constitutional rights to judicial protection and the judicial review (appeal), provided that certain specific issues that were identified above have already been resolved and some regulations have been clarified.