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THE PURPOSE AND FUNCTION OF INSTITUTION OF CASSATION REVIEW IN THE LEGISLATION OF UZBEKISTAN

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Abstract

This article analyzes the importance of the case in the cassation review, its goals and objectives. In particular, the supervisory instance on which this institution is based has been considered from a historical point of view. Also, the history of establishment and reforms of the institute of supervisory instance, amendments in the legislation are covered by the article. It also critically examines the problematic aspects of the institution of reconsideration of the case in the cassation procedure. The right to judicial protection was also analyzed to carry out this analysis. Based on this principle, the institute of cassation review of the case was evaluated by author.

Keywords: supervisory instance, cassation, cassation review, judicial protection, judicial review, court decisions, amendment

The institution of reviewing court decisions is important to ensure that they are fair and justified. The Institute of Judicial Review has also been established in the Republic of Uzbekistan. Under current law, the institution of judicial review consists of an appellate, cassation, and cassation review. An amendment to the procedural legislation in 2021 abolished the supervisory instance and replaced it with the institution of cassation review.

Although the supervisory instance has been abolished, it can be seen that the institute of cassation review of cases, which is a new institution for reconsideration of court decisions included in the Code, is exactly the same as the supervisory instance. That is, the parties and stakeholders can't apply directly to the court, but they must apply to the President of the Supreme Court, the Attorney General or their deputies. They will consider the application and decide whether to file a protest or not to reconsider the case in cassation. The decision to file a protest is based on the violation or misapplication of substantive or procedural law¹.

This article analyzes the institution of the cassation review of court decisions based on the principle of

the right to judicial protection. To do this, we first focus on the principle of the right to judicial protection. Then there is a brief history of the supervisory instance. The working mechanism of the institute of cassation review of existing cases will then be discussed on the basis of the above analysis. In the conclusion, the author's opinion will be given as to whether the institution of cassation review restricts the right of citizens to judicial protection.

Article 44 of the Constitution provides for the right to judicial protection, which states that "Everyone shall be entitled to legally defend his rights and freedoms, and shall have the right to appeal any unlawful action of state bodies, officials and public associations."² This article is interpreted in the Plenum decision of the Supreme Court of the Republic of Uzbekistan as follows: "Judicial protection of the rights, freedoms and interests of individuals and legal entities is an important institution of state protection, which is ensured by an independent judiciary."³ It is clear from the explanation in this Plenum decision that the right to judicial protection is guaranteed only through the administration of justice. Justice is administered only by the

¹ Civil Procedure Code of the Republic of Uzbekistan. Art.419³. <https://lex.uz/docs/3517337>

² <https://www.un.int/uzbekistan/uzbekistan/constitution-republic-uzbekistan>

³ O'zbekiston Respublikasi Oliy Sudi Plenumining 2020-yil 3-iyuldagi "Jismoniy va yuridik shaxslar huquqlari va qonuniy manfaatlarini sud orqali himoya qilish to'g'risida" 11-onli Qarori.

court⁴. This means that the protection of a person's rights and freedoms through the courts means that the person can apply directly to the court and that his or her application will be considered by the court. The court is a trial held in accordance with the law.

According to Article 14 (1) of the International Covenant on Civil and Political Rights, "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."⁵

From these considerations, it can be concluded that the application or complaint for reconsideration of the case in the cassation procedure is also correct from the point of view of the principle of the right of judicial protection.

Then the introduction of the supervisory instance, which is the basis of the institute of reconsideration of cases in the cassation procedure, and a brief history of the supervisory instance will be analyzed. First, there is a brief history of the introduction of the supervisory instance. During the Soviet era, the Russian legal system was taken as a model in the legal system, as in other areas. The history of the supervisory instance also dates back to the RSFSR. The idea of forming a single Supreme Court was first put forward by the 1918 Decree on Courts⁶. Initially, the People's Commissariat of Justice was given the power to exercise supreme control over court decisions and judgments. The power to review court decisions was then transferred to the Supreme Court.

Before describing a supervisory instance, it is important to consider the meaning of the word supervision. The word "control" means the constant observation of an action, the state of something, the course of action, a person's behavior, and so on⁷. The supervisory body was an institution introduced during the Soviet era and incorporated specific aspects of Soviet law. In Soviet law, the institution of control played an important role not only in the judiciary, but also in the activities of other bodies. If we look at the date of introduction of the supervisory instance, we can be sure that it was introduced to control the activities of lower courts. Control over the activities of the courts is exercised in two different ways. The first is procedural supervision, which is the supervisory instance. The second is control, which is done in an organizational way. Soviet scholars point out that the main purpose of the supervisory instance is to correct the erroneous decisions of the lower courts, that is, to eliminate errors in judicial practice and, in turn, to generalize judicial practice.

Initially, cases in the supervisory instance were heard only on the initiative of the President of the Supreme Court and the Prosecutor General. The main reason for this was that the main purpose of reviewing cases was not because the parties were dissatisfied with the court decisions, but to correct errors in lower court decisions.

When assessing the effectiveness of the supervisory instance, it is important that the parties have the right to initiate review process themselves, that is, not to depend on the views and opinions of officials⁸.

I.Y. Bikova emphasizes the functions of the supervisory instance to investigate, resolve, protect, control and create law. In civil proceedings, the oversight function of the supervisory instance is mainly focused on performing the main function of supervisory proceedings. These include the investigation of court decisions that have entered into force - violations of human rights and freedoms, violations of the rights and legitimate interests of certain individuals, violation of the unity of interpretation and application of the law by the courts, violation of substantive or procedural law, that such violations have affected the legality of the appealed court decisions and deprive the parties to the material or procedural legal relations of the dispute of their rights enshrined in the Code of Civil Procedure, such as the right to a fair trial based on the principle of equality and adversarial proceedings or significant restriction of such rights⁹.

Another important function is conflict resolution. That is, disputes are resolved through civil litigation. The supervisory instance does not re-examine the circumstances of the civil case, but examines the applicable law.

The protective function of the supervisory instance is directly related to the purpose of civil proceedings and is to protect the violated, disputed rights, freedoms and legitimate interests of citizens and organizations. First of all, this protection is manifested in the consideration and resolution of civil cases. The second is to protect against errors in court decisions that have entered into force.

As supervision function, there are two types of supervision of the judiciary by the Supreme Court. The first of these is in the form of supervision of the activities of the lower courts by the Supreme Court through the review of civil cases. The second is the control over the interpretation and application of the rule of law by the courts.

As a function of lawmaking, it is done in the form of filling in gaps or clarifying uncertainties by interpreting the law during the review of civil cases on gaps or ambiguities in the legislation.

⁴ Civil Procedure Code of the Republic of Uzbekistan. Art.7. <https://lex.uz/docs/3517337>

⁵ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶Л.А.Терехова.Надзорное производство в гражданском процессе: проблемы развития и совершенствования. Wolters Kluwer. 2009. - С.11.

⁷ А.Мадвалиев. O'zbek tilining izohli lug'ati. O'zbekiston Milliy Ensiklopediyasi.Toshkent. – B.12

⁸ Л.А. Терехова. Надзорное производство в гражданском процессе: проблемы развития и совершенствования. Wolters Kluwer. 2009. - С.44.

⁹И.Ю. Быкова. Функция надзорного производства в гражданском процессе.//Журнал российского права. 2016. №2. - С.121.

Proceedings in the supervisory instance are divided into three stages¹⁰:

The first step is to review applications for review of court decisions or rulings that have entered into force and, if necessary, to recall a civil case to verify the legality, validity and fairness of the court's decision or ruling.

The second stage is to examine the legality, validity and fairness of the court's decision by examining the case and, if necessary, to file a supervisory protest;

In the third stage, the appellate court review the case

Prior to the above amendment, the Code of Civil Procedure details the procedure of supervisory proceedings. Under current law, the code of cassation review is very brief in the code and is based on general principles. From this norm, it is difficult to fully understand the procedural aspects of the cassation review. The Code does not specify whether the general grounds refer to the grounds for consideration of the case in the cassation instance or the grounds for proceedings under the previous supervisory instance procedure.

From the above analysis and conclusions, it can be concluded that the institution of cassation review may limit the right of the parties to judicial protection.

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