

**DEVELOPMENT OF THE REVIEW (CASSATION) INSTANCE: A COMPARATIVE ANALYSIS OF FOREIGN LEGAL SYSTEMS**

**Umirzokov Shohrukh Shukhrat ugli**

Lecturer, University of World Economy and Diplomacy

[umirzoqov.sh@uwed.uz](mailto:umirzoqov.sh@uwed.uz)

**Narimbetov Daniyar Yermat ugli**

Student, Faculty of International Law, University of World Economy and Diplomacy

**Abstract**

This article examines the development of the review (cassation) instance in civil proceedings through a comparative analysis of selected foreign legal systems. Emphasis is placed on the role of higher judicial instances in ensuring legality, fairness, and uniform application of law, in accordance with international human rights standards. The study analyzes the legal nature and practical functioning of review mechanisms in Uzbekistan and compares them with the experiences of Germany, Moldova, and France. Particular attention is paid to issues of judicial impartiality, institutional independence, and procedural balance arising from the current review practice. Based on the comparative findings, the article proposes institutional reforms aimed at strengthening the effectiveness of the review instance and enhancing public confidence in the judiciary.

**Keywords:** Review instance; cassation proceedings; civil procedure; judicial control; comparative law; fair trial; higher courts

As we all know, today the judiciary is one of the foundations of every democratic society. Guaranteeing the rights and freedoms of citizens, ensuring that court decisions are fair, legal and reasonable is one of the main means of ensuring social equality among citizens in society and strengthening the judicial system. One of the important international legal documents in this regard is the International Covenant on Civil and Political Rights, adopted on December 16, 1966. Article 14, paragraph 1, of this international instrument states: "All persons are equal before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in any civil proceeding, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [1]" and, according to paragraph 5 of this article, everyone convicted of a criminal offence is entitled to a fair and public hearing by a higher tribunal [2].

The rights and freedoms of a person, enshrined in the Constitution and laws, are inviolable and no one has the right to deprive them of them or restrict them without a court decision [3]. In civil court proceedings, reliable protection of the constitutional rights and freedoms of a person and ensuring a fair trial are considered one of the priority tasks of the state. Control by higher judicial instances plays an important role in verifying the legality and justification of court decisions. In particular, in the civil process, the review instance is recognized as an independent stage ensuring the rule of law at the level of decisions. Review proceedings are a stage of civil proceedings in which a higher court reviews the legality, validity, and fairness of a court's final decision, ruling, and ruling upon a complaint from a party to the proceedings or a prosecutor's protest.

The principle of "one court - one instance" is considered fundamental for the effective administration of justice, strengthening judicial decisions, and reliable protection of the rights and freedoms of citizens. The review instance in civil proceedings is an independent and important component of the judicial process, and plays a significant role in ensuring the legality, fairness, and justification of judicial decisions. It serves, first of all, to prevent violations of the law and ensure procedural justice by analyzing the decisions of higher courts of lower instance. Although the legal foundations of the inspection instance are clearly defined by the new edition of the Civil Procedural Code of the Republic of Uzbekistan, today the issue of its further improvement in practice remains urgent. This need arises, on the one hand, from the need to eliminate shortcomings in national legislation, and on the other hand, from the requirements for modernization of the judicial system, taking into account international legal instruments and the experience of foreign states.

In the current judicial practice, complaints filed in the review procedure, in accordance with the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated June 25, 2024 No. 20, are determined to be considered by the regional and equivalent courts that previously considered the court case in the appellate or cassation procedure, that is, by the same court. It is issued [4]. This contradicts the principles of impartiality and neutrality in judicial practice and undermines the independence and procedural balance of the judicial system, since one court re-examines its previously adopted decision. In particular, the regulatory and legal aspects of this situation are regulated in Article 20 of the Civil Procedure Code [5]. This article strictly prohibits the repeated participation of a judge(s) in a court case in another instance court in the same court case in which he/she participated, which is intended to prevent procedural impartiality and conflicts of interest. However, in practice, although this procedure is legally implemented, its substantive impact is reduced, since audit complaints are considered in the same court building and by judges from the same judicial system. The preservation of one court building, judicial corps and internal friendly relations can have an indirect, if not direct, psychological and professional impact on impartial decision-making. Therefore, the following proposal can be put forward to address this problem.

Proposal - Introduce regional review instances across regions, for example, introduce a single review instance court for Andijan, Namangan, and Fergana regions in a general manner, and establish a system of sending court documents reviewed in the appellate or cassation procedure to regional courts, not to the same regional or equivalent court. This approach will not only increase citizens' confidence in a fair trial, but also provide real oversight of higher courts and guarantee an objective and independent analysis of court decisions.

The effectiveness of the institution of review of court decisions in a higher instance in civil proceedings is considered one of the main guarantees for ensuring a fair trial in any democratic state. Currently, the issue of improving the review instance in civil cases is of great importance in the legislation and judicial practice of the Republic of Uzbekistan. In particular, by comparing the activities of higher courts in the civil judicial system of Germany, Moldova, and France, relevant conclusions can be drawn for Uzbekistan.

**GERMAN EXPERIENCE.** It should be noted that in many developed countries, in particular, Germany, if there is no such instance in the civil court system as the "review instance", which is directly similar to ours, there are alternative instances that act on the basis of cassation and revision. In the Federal Republic of Germany, the activities of the highest courts of civil cases are regulated by the "Gerichtsverfassungsgesetz" [6]. The civil court system of the Federal Republic

of Germany has three levels, in which the main instances are the district courts (Amtsgerichte), the regional courts (Landgerichte), the federal regional courts of appeal (Oberlandgerichte) and, at the highest level, the Bundesgerichtshof (Federal Supreme Court). The Bundesgerichtshof has the authority to consider cases in the revision procedure, at which stage the legal basis of the court decisions is checked, and not the content of the case. German Civil According to Article 542 of the Code of Civil Procedure (Zivilprozessordnung), the revision procedure applies only to final court decisions issued by the appeal instance (Berufungsinstanz).

According to Articles 4194-41929 of the Civil Procedure Code of the Republic of Uzbekistan [5], the reviewing court considers complaints (protests) filed against decisions, rulings and resolutions issued by courts of appeal or cassation. This means that in our judicial system there is one more higher level after appeal and cassation. In German law, the consideration of a case by a higher court is limited to legal grounds and the factual circumstances of the case are not reviewed. In this respect, the Bundesgerichtshof in Germany differs from the reviewing court in Uzbekistan. Because in Uzbekistan, the reviewing court examines the case from all sides, not only from a legal, but also from a factual perspective. In addition, in Germany, the Bundesgerichtshof has a special structural structure, for example, through the "Größer Senat" and the "Vereinigte Große Senate", mechanisms have been established to eliminate differences in legal approaches between different senates [6]. This is an institution that does not exist in the experience of Uzbekistan and serves to ensure unity of legal approaches between courts.

**EXPERIENCE OF THE REPUBLIC OF MOLDOVA.** The civil judicial system of the Republic of Moldova has a multi-tiered judicial procedure system, which monitors the legality and fairness of court decisions through the courts of higher instance. Based on the articles of the Moldovan Civil Procedure Code, there are three main forms of higher court instances: appeal, cassation and revision proceedings. Each of them differs from each other in its procedural mechanism, procedural time frame and scope of authority. The appellate instance is a court of higher instance that fully reviews the case in terms of facts and law based on the decision and rulings of the court of first instance (Articles 357, 373 of the Code of Civil Procedure) [7]. An appeal is filed within 30 days of the decision of the court of first instance (Article 362 of the Code of Civil Procedure) [7] and the case is considered by the appellate chambers. The cassation instance exercises only legal control. This instance does not introduce new evidence, but only analyzes errors in the application of law by lower instances (Articles 432, 442 of the Code of Civil Procedure) [7]. The deadline for filing a cassation appeal is two months (Article 434 of the Code of Civil Procedure) [7] and the case is considered by the Supreme Court Chamber (Article 431 of the Code of Civil Procedure) [7]. In addition, Moldova has another important mechanism - the revision procedure, which is similar to the review instance in the Uzbek judicial system and is considered only in certain cases, namely when a crime is detected, new evidence appears, or the case can be reviewed based on a decision of the European Court of Human Rights. This procedure is regulated by Articles 446 - 453 of the Code of Civil Procedure of Moldova [7]. An appeal for revision can be filed by the following entities: participants in the case, as well as individuals whose rights and interests have been violated, or representatives of the state (Article 447 of the Code of Civil Procedure). The form of the appeal is similar to ours and is sent to the court that previously considered the case. Procedural deadlines are also clearly defined, for example, in the event of new circumstances being identified, it must be filed within three months, but not later than the expiration of a general five-year period (Article 450 of the Code of Civil Procedure). After considering the application, the court may make the following decisions: reject

the revision or satisfy the application and cancel the previous court decision (Article 453 of the Code of Civil Procedure) [7]. In this case, the court, within the framework of its procedural powers, reconsiders the case, and, if necessary, returns it to another instance.

**FRENCH EXPERIENCE.** In France, the highest court of appeal is the Court of Cassation (Cour de cassation), which only verifies the legality of the court decision. According to Article 604 of the French Code of Civil Procedure (Code de procedure civile), the court does not review the factual aspects of the case again, but only if a violation of the law is found, the case is returned to the lower courts. In addition, this court does not allow the parties to participate in the consideration of the case and the possibility of introducing new evidence [8]. One of the French lawyers, J. Carbonnier, emphasizes in this regard: “The cassation instance is the last bastion that protects the law and ensures procedural stability” [9]. This approach ensures the strength of judicial decisions and procedural stability in France. At the same time, the negative side of this system is that the possibilities for citizens to file complaints are narrowed, and only cases with legal complexity are considered.

The institution of review of cases in the civil process is an integral part of the functioning of the judiciary in democratic countries, based on the principles of legality, fairness and impartiality. Although this procedure has been significantly improved in the judicial system of the Republic of Uzbekistan in recent years, it still needs in-depth analysis and consistent reforms, both theoretically and in practical application.

Articles 419<sup>4</sup>–419<sup>29</sup> of the Civil Procedure Code of the Republic of Uzbekistan establish the main legal criteria for the conduct of audit proceedings and create certain procedural guarantees for this institution [5]. However, these legal bases are not applied consistently, systematically and uniformly by the courts in practice, and despite the fact that in some cases court decisions have entered into legal force, the lack of an effective control mechanism over complaints and protests remains one of the important factors that undermine citizens' trust. In the course of the study, the activities of the higher courts of foreign countries such as Germany, Moldova, and France were studied. For example, in Germany, the court of appeal has the authority only to determine legal errors, and factual situations are not reviewed. In Russia, the possibility of appealing to the supervisory authority in order to guarantee the constitutional rights of citizens is limited to certain periods, but it is carried out openly. In the Republic of Belarus, there is no possibility of personal appeal to the courts of higher instance, only protests can be filed through authorized bodies.

These international experiences, as well as the standards set out in the European Convention on Human Rights and the 1966 International Covenant on Civil and Political Rights [1], serve as an international legal basis for the more effective functioning of the inspection procedure in the Republic of Uzbekistan. These documents guarantee the right of an individual to independent, impartial and fair judicial protection.

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