

Terms of admissibility of cassation appeal in administrative law proceedings

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Summary

Under Article 42 of Constitution of Georgia, every person has the right to apply to court for protection his rights and freedoms". Rights of every citizen are safeguarded by the judicial system that provides the opportunity for appeal and cassation of court decisions. The purpose of the cassation is the protection of legal interests of the parties and provision of united law execution; protection of the united system of law execution; the univocal definition of the law; and law development. The cassation court considers the case to be admissible only in case if the case is important for the development of law and establishment of uniform law practice or if the decision of the court of appeals essentially differs from the practices earlier available on these kinds of cases at the Supreme Court. Besides, the cassation court considers an appeal, if the cassation court has considered the case with considerable procedural infraction and this infraction could essentially influence the case result.

Резюме

В соответствии со статьей 42 Конституции Грузии, каждый человек имеет право относиться к суду за защиту его права и свободы". Права каждого гражданина гарантированы судебной системой, которая обеспечивает возможность для обращения и кассации решений суда. Цель кассации - защита законных процентов сторон и предоставление объединенного законного выполнения; защита объединенной системы законного выполнения; недвусмысленное определение закона; и законное развитие. Суд кассации полагает, что случай допустим только в случае, если случай важен для развития закона и учреждения однородной юридической практики или если решение апелляционного суда по существу отличается от методов, ранее доступных на этих видах случаев в Верховном Суде. Кроме того, суд кассации рассматривает обращение, если суд кассации рассмотрел случай со значительным процедурным нарушением, и это нарушение могло бы по существу влиять на результат случая.

The convention on human, s rights cconsiders the right to legal court to be an intergral part the basic right to the legal court. According to the paragraph 1 of article 6 of the convention, , Each man is equipped, in resoneble term, with the right to have justly end publicly considered his case by the independent and impartial court created on the basis of law. "

For the time being the rights of Georgian citizen are safeguarded by the judicial system that provides the opportunity for appeal and cassation of court dicisions. Hence, [the mentioned system is fully compatible with the requirements of the European Convention on Human rights].¹

[Human history has not had and will not have a more effective instrument for otection of rights than a remedy.]²

[The delivery of an unijust judgment that may be coust errors of the court hearing the case as wellas by bias, i. e. the interesest of the court to unjudicate the matter not is accordance with law but in favour of by party] ³ affects the party of legal proceding and finds reflection on the justice system, including on the formation of the uniform judicial practice.

, , Cassation"(Lat. cassare) From the Latin language and it mean liquidation, invalidation, abatement. [in the sccience of law first it asquired the meaning of invalidation of judgment without making the new relevant judgment by body of cassation].⁴

The administrative code of practice of Germany applies the concept, , revision" this ward too has latin origin (Lat. Revidere) it means revision. in the sccience of law it means the legal means fpr revision of judgment by the supprime courts in terms of violation of law and not in terms of facts.

[Generally, the Supreme courtsensure that the citizens' legal condition be guaranteed in relationship with other citizens or governmentbodies. The Supreme Courts should

provide the direct application of constitutional norms and definition of laws taking into account this norms].⁵

The cassation court considers the case to be admissible only in case if the case is important for the development of law and establishment of univalent law practice or if the decision of the court of appeals essentially differs from the practices earlier available on these kinds of cases at the Supreme Court. Besides, the cassation court considers an appeal, if the cassation court has considered the case with considerable procedural infraction and this infraction could essentially influence the case result.

Establishment of univocal court practice has great importance not only English-American Law Family, where the court decisions have precedent and obligatory force, also in the European countries of continental law.

1# Terms of entering of appeal in the reference (Formal admissibility)

Unless otherwise prescribed by administrative procedures law, Provisions under the Civil Procedures Code of Georgia shall be applicable to Administrative proceedings.

Administrative code of practice of Georgia gives the right of revising to the parties and the third persons by the independent appeal (**Article 16. II of the Administrative Procedures Code**).

The subject of revision is the judgment (verdict) of the Court of review. It separates the stages of verification of existence of formal and factual preconditions for permissibility. After receiving the revision the judge examines the formal side of the revision.

The appellant court during 10 days term checks the appeal.

1. Entering of an appeal by the authorized person;
2. Entering of an appeal in the term established by law;
3. Correspondence of appeal content with the law requirements;
4. The Grounds of Admissibility of the Cassation in the Supreme court of Georgia provided under Article 34 of the Administrative Procedures Code.
5. payment of state due.

If the revision of cassation permissibility is allowed then the proceeding begun on the basis of revision will spin into the reviewing procedure and will continue in this way. Since the moment of giving verdict to the party the term of filing grounded revision starts.

The substantial institute of administrative proceedings of Germany is the "Spring cassation". When the parties wish to reach the final decision by avoiding the instance of appeal court, proceeding from the economy of the process and for acceleration of proceeding they may select the method of "Spring cassation".

[In cases when the factual circumstances are not disputable and only the legal issues are to be considered, the appellation may become the delaying intermediate link that protracts solution of the important legal issue by the judicial body and that is unjustified. In such case the judgment given according to the rule of first instance for which the appellation is permitted may become subject directly to the instance of cassation avoiding the instance of appellation. The necessary preconditions: consent of opponent and admission of "Spring cassation" as permissible by the court of review. The petition for permission of cassation and the consent of the opponent are considered as the refusal about appealing. Withdrawal of the written consent is not allowed. The petition shall be brought into written form at the court of review. The petitioner shall ground the existence of preconditions for permissibility of "Spring Cassation". "Spring Cassation" is permitted if the case is relevant or if the development of court or providing the homogenous legal practice requires giving judgment by the court of review; "Spring Cassation" cannot be based on violation of procedural norms. If the party's requirement is based on violation of procedural norm than is should first appeal to the court of appeal. Unlike the ordinary cassation the issue of "Spring cassation permissibility is solved by the court of review itself].⁶

2. The Grounds of Admissibility of the Cassation in the Supreme court of Georgia provided under Article 34 of the Administrative Procedures Code.

According to 34 article of Administrative Procedures Code the appeal is admissible, if the case is important for the development of law and establishment of univocal law practice.

[The court should by its own discretion define how much is the case important for the development of the law. The case important for law development means the creation of legal precedent. In this case, the law definition has importance, which should be applied by the law for the regulation of concrete relation].⁷

[The case is important when it is expected that the decision made in this relation by the cassation court will provide the univocal understanding of law norms and further development of law].⁸

[The special importance of the case should not be understood as though it was dependent totally on the importance of the legal dispute, the subject of dispute or its result. The special importance of the case means that it refers to the explanation of doubtful legal issues that should be responded by the law decision.

The existence of the case's special importance is not sufficient, more than that, the part of decision to be made by the cassation court should comprise the general legal principle, which will support the strengthening the legal self-conscience (legal preciseness) towards the issue to be resolved.

The legal issue is to be defined when different views are available in relation to it and this issue has not yet been made by the Supreme Court. In this case, the cassation court decision on this issue made by the Supreme Court, i. e. the practice inculcated by the Supreme Court should not exist].⁹

[When the case is important for the development of law it becomes important for formation of the homogenous legal practice].¹⁰

[The case acquires importance for the development of law and it requires the decision by the instance cassation, if the certain case triggers the court to form the guideline: for explanation of norms of material procedural laws or for filling gap in law].¹¹

[There is no homogenous explanation of "judicial practice" in legal literature. Sometimes the judicial practice is identified as precedence, sometimes it is identified as the judgment of supreme court and sometimes it is identified with the judgment of any court.

According to one idea the judicial practice as a result of judicial activity is the result of the explanation of norm while decision of certain case].¹²

[The judgment as the precedent can be revealed in the explanation of the contents of the available norm that is called the "declaratory precedent in English or in case of absence of norm or custom - it can serve as the basis for creation the new norm that is called "original precedent". The judicial practice is the rules created while giving judgment about the certain cases. According to Shershenevich the obligatory force of judicial practice is included not in itself but in the state will that can rank the judgments as the one having the legal form or not].¹³

In the processual legislation, we have the analogy of the law and legislation, which means that it may be a gap in the legislation. If the case refers to the issue, for the solving of which is necessary the elimination of the gap, the Supreme Court should eliminate this gap. If the Supreme Court has earlier considered this issue and the gap have been eliminated, the cassation will not be admitted, i. e. the Supreme Court should not have early discussed the issue and eliminated the gap.

The purpose of the cassation is the protection of legal interests of the parties and provision of united law execution; protection of the united system of law execution;

the univocal definition of the law; and law development.

[The core objective of the court of cassation is not to hear the case on its merits but to examine the legality of the judgment delivered by the court of lower instance].¹⁴

Judge-made-law that is less developed in Georgia and other countries; [The shortcomings of the law, as well as a number of unregulated legal relations can force a judge to get involved in legislative activities. The judge-made-law acquired particular significance over the past fifty years and as a result it became one of the most important and new sources for the law, together with the parliamentary laws].¹⁵

[Consequently, the urgency of the judge-made-law has been doubtless in the legal environment of both Germany and France since the second half of the nineteenth century. Furthermore, for the time being, the judge-made-law is the classic topic of the training methodology. the only subject matter of the dispute is the law and what extent can a judge-made-law be admissible].¹⁶

3. Specifics of the divergent cassation

The cassation is admissible, if the decision of the court of appeal differs from the established practice of the Supreme Court of Georgia on such categories of cases.

The essence of cassation lies both in the protection of the parties' rights and legal interests and in the provision of united system of public justice. it is very important the development of law, establishment of univocal law practice and protection of the united system of public justice.

[For the establishment of univocal law practice, the cassation is admissible, also, in such cases, when the inculcation of acute differences should be avoided in the law practice from the beginning. The law practice, by the rule, should be univocal. The practice should be protected from the decisions greatly differing from each other; more than that, the Supreme Court decisions should be univocal. Making different kinds of decisions on the univocal cases by the Supreme Court will really harm the united law practice].¹⁷

[The definition of law norm is the process and not the one-time act; the cassational court makes the dynamic definition of the norm. All this gives impetus to the perfection of public justice practice].¹⁸

[Divergence will be regarded as the basis of cassation permissibility only if by the moment of passing the judgment by the judging court the instance practice already exists from which the appealed judgment has diverged].¹⁹

4. Specifics of the legal proceedings, involving cases during consideration of which the courts of appeal committed material procedural violations.

The cassation is admissible, if the court of appeal which resolved the dispute committed such material procedural violation, which could have had the material adverse affect on the outcome of the dispute.

The violations of the procedural-legal norms may be addressed if the court of cassation finds that the judgment is based on the provisions misapplied and must therefore be repealed.

It is necessary that the processual defect, on which the decision is based, be important and the processual infringement influenced on the final result, i. e. decision of the case.

such processual infringement is important, which influenced the result of the decision, i. e. if not this processual infringement, then the made decision would be different.

[The lawmaker itself makes the definition of this processual infringement, which necessarily causes the cancellation of the decision. The absolute basics of appeal defined by 394 article of CPCG, is the imperatively established norm by the admissibility legislation of the appeal].²⁰

According to article 132 of the Administrative Processual Code of Germany, the cassation is admissible only when it is based on the process gap, which is given and which is the basis of the court decision. Administrative Processual Code of Germany is oriented towards any process infringement and not towards the important processual infringement, as it is given in Civil Processual Code of Georgia. if the process infringement could not influence the decision, i. e. could

not essentially impact the result, the appeal could be inadmissible.

[Any judgment delivered by the court of cassation in manner provided by law serves both private and public interests. the essence of the practice of the court of cassation in the process of delivering a judgment is to procure observance of the rule of the law in the practice of the lower courts. on the one hand and on the other hand. The most effective means for the protection of personal rights and legitimate interests of individuals. Further the judgments delivered by the court of cassation form the uniform judicial practice for the existing justice system. The whole series of judgments delivered by the court of cassation form the uniform judicial practice that entails the idea of and opportunity for the development of the so-called case law in case of national and public preparedness].²¹

In conclusion we can say that the purpose of the cassation is the protection of legal interests of the parties and provision of united law execution; protection of the united system of law execution; the univocal definition of the law; and law development.

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