The general description of the judicial review in the new criminal procedure code of the Republic of Armenia

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For citation: Ghazinyan, G. S. 2025. "The general description of the judicial review in the new criminal procedure code of the Republic of Armenia". *Vestnik of Saint Petersburg University. Law* 1: 177–186. https://doi.org/10.21638/spbu14.2025.113

The article is dedicated to the general characteristics of the institution of judicial review in the new Criminal Procedure Code of the Republic of Armenia (RA). This Code entered into force on July 1, 2022. The relevant regulations of the new and former Criminal Procedure Codes of the Republic of Armenia, adopted on July 1, 1998, were subjected to a comparative legal analysis. The latest developments were outlined, and their necessity was presented. The new structures of judicial review and the need to incorporate them into the new RA Criminal Procedure Code were the subject of a detailed analysis. Alongside the new regulations, some theoretical and practical issues related to them were discussed. Particularly, the goals of each of the review structures, the relevant procedural regulations conditioned by them, have been made the subject of a detailed discussion, based on the constitutional status and mission of the courts conducting the review and the latest developments in this regard. The practical issues related to the legislative regulations of the grounds for cassation review have been thoroughly analyzed. One of the general conditions of judicial review such as the issue of the limits of review has been discussed, the powers of the court conducting the review in the case of a special review, and the issues of the judicial acts became legally binding have been highlighted.

Keywords: review structure, review, cassation, special review, review powers, review limits.

1. Introduction

In criminal procedure, the right of a person to have a judicial act made against them reviewed is a fundamental human right, as declared both in domestic legislation and international legal acts. Therefore, it is no coincidence that one of the conceptual directions in the development of the new Criminal Procedure Code of the Republic of Armenia (hereinafter — the Code), which came into force on July 1, 2022, was to improve the legal regulation of the system of judicial review and its elements, aimed at ensuring the operational significance of each review mechanism and enhancing the efficiency of the entire system[1].

[1] See: ՀՀ քրեական դատավարության նոր օրենսգրքին հավանություն տալու մասին ՀՀ կառավարության 2011 թվականի մարտի 10-ի թիվ 9 արձանագրային որոշումը [Protocol Decision of the Government of the Republic of Armenia no. 9 of March 10, 2011 On Approval of the New Criminal Procedure Code of the Republic of Armenia]. Accessed March 18, 2025. http://www.irtek.am/views/act.aspx?aid=61628.

The consistent realization of the fundamental right to judicial review requires the presence of effective mechanisms for judicial review. The current Criminal Procedure Code of the Republic of Armenia represents significant progress in clarifying the judicial review mechanisms. A separate part — Part 11 — of the Code is dedicated to the institution of judicial review. It consists of five chapters, the first of which deals with the general conditions of judicial review, and the other four chapters relate respectively to the following four mechanisms of judicial review: appeal; cassation; special review in Appellate and Cassation Courts; exceptional review based on new, newly discovered circumstances and fundamental violations:

The Criminal Procedure Code of the Republic of Armenia adopted on July 1, 1998 (hereinafter — the former Code) also provided for these methods of judicial review with certain terminological peculiarities. However, the issue lies not only in clarifying the terms but also in providing effective procedural mechanisms corresponding to the specific structure of each review process and ensuring that the procedures reflect the essence of the review. In other words, it is necessary to clarify the functions of the review within the framework of each specific mechanism.

2. Basic research

In Armenian legal practice, the effectiveness of the operation of the three-tier judicial system has often been questioned, particularly regarding the simultaneous existence of two reviewing judicial bodies if they do not functionally differ from each other. Therefore, the existence of every state body, including appellate and cassation courts, must be justified primarily in terms of the necessity and effectiveness of the functions performed by these bodies (Hovhannisyan 2016, 167).

Therefore, it is no coincidence that one of the conceptual approaches of the recent constitutional reforms was to clarify the functional roles of the judicial review bodies[2].

Thus, according to Art. 171 of the Constitution, the Court of Cassation is the highest judicial body in the Republic of Armenia (RA), except for constitutional justice. This court ensures the uniform application of laws and other normative legal acts by reviewing judicial acts within the scope of powers defined by law and addressing fundamental violations of human rights and freedoms. Article 172 of the Constitution further specifies that the Court of Appeal is a judicial body reviewing the judicial acts of first-instance courts within the scope of powers defined by law.

Regarding the new constitutional status of the Court of Appeal, it should be noted that the systemic analysis of the aforementioned constitutional articles clarifies that the primary judicial body responsible for conducting judicial review in the Republic of Armenia is the Court of Appeal. This is because the Court of Cassation can only review a limited number of cases, exclusively due to the need for uniform application of normative legal acts and the remedying of fundamental violations of human rights and freedoms (Hovhannisyan 2016, 168).

As previously mentioned, the distinctive feature of the review process is the opportunity to examine evidence in the case and thus address the factual aspects of the case,

[2] See: Հայաստանի Հանրապետության սահմանադրական բարեփոխումների հայեցակարգ, հոկտեմբեր, 2014 [Concept of Constitutional Reforms of the Republic of Armenia]. Accessed March 18, 2025. http://www.parliament.am/library/sahmanadrakan%20barepoxumner/hayecakarg.pdf.

which differentiates it from other forms of judicial review, including cassation. From the analysis of the referenced constitutional articles, it can be concluded that there has been an attempt to reflect the review process's characteristics and develop the idea that the authority to render a final judicial act based on facts is reserved for the Court of Appeal. In contrast, the Court of Cassation acts exclusively as a court of law. In the context of these new constitutional regulations, the role of the Court of Appeal as a second-instance court is further emphasized. Therefore, it is necessary to discuss how well the current legislative regulations on review align with the constitutional mission of the Court of Appeal and whether they provide sufficient legal grounds for the effective realization of the right to judicial protection by the Court of Appeal (Sujyan 2017b)[3].

In this regard, it seemed unjustifiable that the previous legislation empowered the Court of Appeal to also review cases under the cassation procedure. This was an unjustifiable deviation from the essential requirement of clearly distinguishing the functional roles of different review instances and is clearly in contradiction with the new constitutional status of the Court of Appeal.

Correcting judicial errors and, accordingly, protecting the rights and freedoms of a person or citizens is one of the fundamental issues before the judicial review system. The role of the Court of Cassation, which is one of the components of this system, cannot remain unaffected by this issue. The importance of this review process is further emphasized by the fact that, as a rule, the judicial review in this form is carried out by the highest judicial authority in the country. As the highest body of judicial authority, it is tasked with ensuring justice (Sujyan 2017a).

The cassation review of judicial acts is also intended to address another critical issue of judicial review: ensuring the uniform application of the law. The importance of this issue is indisputable in the sense that the development of consistent law enforcement standards is a crucial mechanism for ensuring the constitutional principle of equality before the law and the court for all, the supremacy of the law, and the fundamental values of legal certainty (Bystrov 2009; Yurevich 2011).

It is necessary to agree with the opinion expressed in the theoretical literature that the uniform interpretation of the law by higher judicial authorities, and consequently the provision of consistent judicial practice, is an objective necessity. This necessity is due to factors such as continuously changing legislation, which often creates complex legal problems in law enforcement practice, the need to respond quickly to legislative gaps, and the gradual compliance of the legal system with the generally accepted principles of law and international legal norms (Skitovich, Sedelnik 2014; Vishnevsky 2011; Zweigert, Kötz 2000).

The European Court of Human Rights (hereafter — the European Court) has also emphasized the importance of this issue[4]. In its case law, the European Court has noted that it is the duty of the supreme judicial authorities to provide interpretations that have a guiding significance for lower courts. Otherwise, the supreme judicial authority itself

[3] For more details, see: Դատավորի ձեռնարկ (գիտագործնական վերլուծություն), Երևան, Ասողիկ, 2010 [The Judge's Manual (Scientific and Practical Analysis). Yerevan, Asoghik, 2010].

[4] S. W. v. the United Kingdom, 1995 թվականի նոյեմբերի 22-ի վճիռ, գանգատ թիվ 20166/92, կետ 36 [S. W. v. The United Kingdom, Judgment, Strasbourg, November 22, 1995, Application no. 20166/92, point 36]; C. R. v. the United Kingdom, 1995 թվականի նոյեմբերի 22-ի վճիռ, գանգատ թիվ 20190/92, կետ 34 [C. R. v. the United Kingdom, Judgment, Strasbourg, November 22, 1995, Application no. 20190/92, point 34].

becomes a source of legal uncertainty, undermining public confidence in the judicial system[5].

Under the current conditions of the globalization of legal systems, it is appropriate to assign the highest judicial authority the functions of developing law and ensuring a unified legal policy (uniform application of the law). For this purpose, introducing mechanisms to reduce the workload of the Court of Cassation is justified. However, as the supreme body of judicial authority, the Court of Cassation must have the opportunity to perform its primary function of administering justice. This balanced regulation approach is reflected in the 2015 amendment to Art. 171, Part 2 of the Constitution of the Republic of Armenia, which states that the Court of Cassation ensures the uniform application of laws and other normative legal acts and eliminates fundamental violations of human rights and freedoms.

In this regard, we should note that, from the perspective of ensuring a reasonable balance between the functions of uniform application of the law and the administration of justice in the activities of the Court of Cassation, the current Code clarifies the essence of the cassation mechanism. This is done by maintaining the discretionary order of admitting appeals for proceedings as a guarantee of effective implementation of uniform application of the law while also stipulating that in cases of gross judicial errors, appeals must be admitted to proceedings regardless of the necessity of availability or absence of ensuring the uniform application of the law.

Certainly, the regulation in Art. 381, Part 1 of the Code is somewhat problematic in this regard, according to which the Court of Cassation accepts an appeal for proceedings if it comes to the conclusion that:

— an apparent judicial error has been made by the appellate court, or there is an apparent factual or legal circumstance that renders the contested judicial act unlawful, and at the same time, the decision of the Court of Cassation on the issue raised in the appeal may have significant importance for the uniform application of the law or other normative legal act, or

— due to an apparent serious judicial error or the emergence of any serious factual or legal circumstance, the judicial act rendered may undermine the very essence of justice.

The issue is that the presence of a judicial error is a mandatory prerequisite for accepting a cassation appeal on the basis of ensuring the uniform application of the law. However, in practice, there are numerous cases when no judicial error made by a subordinate court is identified during the examination of appeals accepted for proceedings based on the necessity of ensuring the uniform application of the law. Consequently, the contested judicial act is left unchanged in the context of the new legal positions expressed by the Court of Cassation.

Moreover, it should be noted that, unlike the regulations found in the Russian Federation's Criminal Procedure Code (Chapter 47.1)[6], cassation is a standard method of reviewing judicial acts, meaning that cassation appeals involve judicial acts that have not yet come into legal force.

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[5] Beian v. Romania, 2007 թվականի դեկտեմբերի 6-ի վճիռ, գանգատ թիվ 30658/05, կետ 39 [Beian v. Romania, Judgment [Extracts] Strasbourg, December 6, 2007, Application no. 30658/05, point 39]; Pérez Arias v. Spain, 2007 թվականի հունիսի 28-ի վճիռ, գանգատ թիվ 32978/03, կետ 27 [Case of Pérez Arias v. Spain, Judgment [Extracts] Strasbourg, June 28, 2007. Application no 32978/03, point 27].

[6] The Code of Criminal Procedure of the Russian Federation as of January 1, 2024. Accessed March 18, 2025. https://www.consultant.ru/document/cons_doc_LAW_34481.

Compared to the previous Code, the seemingly novel aspect of the review methods is the special review procedure in the appellate and cassation courts. However, in reality, this review method was also present in the previous Code, but it was simply subsumed under the appellate or cassation review processes[7],

It is noteworthy that these methods of review are not provided for in the Russian Federation's Criminal Procedure Code.

Specifically, this pertains to the fact that the distinction between appeal and cassation on the one hand and special review on the other, is based on the object of the appeal — judicial acts that either resolve the case on its merits or do not resolve the case on its merits, respectively. Previously, regardless of the type of judicial acts being appealed, appeals brought against them were reviewed through appellate or cassation procedures. However, separating the special review procedure is not an end in itself. The issue is that due to the object of the appeal, the procedural review procedures (deadlines, powers, etc.) cannot and should not be uniform.

The review of judicial acts resolving the case on its merits, resulting from exercising the fundamental function of justice, reasonably implies longer appeal, review periods, and a broader range of powers for the reviewing judicial instance. In contrast, judicial acts that do not resolve the case on its merits generally pertain to intermediate issues arising during the proceedings and require as prompt a resolution as possible, including through appeal to higher judicial instances. Accordingly, the current Code provides shorter deadlines for appeal and review in the case of special review. The powers of the higher judicial instance are also significantly limited in this type of review. Thus, according to Art. 400, Part 1 of the current Code, in the case of special review in the Court of Cassation, the Court of Cassation:

— leaves the judicial act unchanged;

— amends the judicial act of the lower court if the factual circumstances allow for such an act to be issued;

— annuls the judicial act in whole or in part, issuing a judicial act to replace the annulled part.

An analysis of the aforementioned provision suggests that it provides the possibility for the court to resolve the issue immediately when reviewing judicial acts that do not resolve the case on its merits without making it a subject of discussion in lower courts again.

This legislative regulation is consistent with the legal position expressed by the RA Constitutional Court's decision no. CC decision-1459 of May 7, 2019, that in particular, in the case of a cassation appeal disputing the legality of detention, the authority of the Court of Cassation should be limited to rejecting the appeal or issuing a new judicial act to satisfy the appeal[8]. Although the decision mentioned above of the RA Constitutional Court, as well as the current legal regulations, is based on the idea that the judicial acts that do not resolve the case, in essence, are meant to solve intermediate problems arising during the proceedings, the delay of the final settlement of which may be problematic from the point of view of procedural economy and efficiency and that as a result of the periodic circulation of the appealed judicial act, the judicial act may eventually lose its legal significance,

[7] The RA Code of Criminal Procedure, adopted on July 1, 1998. Accessed March 18, 2025. https://www.arlis.am/DocumentView.aspx? DocID=168423.

[8] The decision of the RA Constitutional Court no. CC decision-1459 of May 7, 2019. Accessed March 18, 2025. https://www.concourt.am/decision/decisions/62591025b9120_sdv-1459.pdf.

nevertheless, we think, the problem under discussion has no definite solution. On the one hand, it should be considered from the point of view of the efficiency of justice and, on the other hand, from the point of view of the comprehensive provision of the right to judicial review. At the same time, speaking about the benefit of the efficiency of justice, it should be noted that, in theory, it is connected with the idea of a reasonable period of trial and the principle of judicial economy, and the principle of saving judicial resources ensures the rational use of forces, the faster and more efficient implementation of justice with the minimum of effort by implementation (Shakiryanov 2012; Grigoryan 2014, 117).

Undoubtedly, considering the importance of ensuring the efficiency of justice as acceptable, we nevertheless believe that in the case of exclusively being guided by it, an individual's right to judicial review, guaranteed by the RA Constitution and criminal law, may be endangered. The problem is that, for example, if the Court of Cassation issues a new judicial act within the scope of challenging the legality of the same arrest decision, the individual's right to judicial review may be limited. In particular, there are possible situations when the court of first instance, for example, based on the lack of reasonable suspicion, rejects the petition for detention, and the court of appeals leaves the mentioned judicial act unchanged without referring to the grounds of detention. In such cases, if we take as a basis only the regulation that the Court of Cassation must decide whether or not to choose detention as a preventive measure, then it turns out that in the second case, the Court of Cassation can refer not only to the condition of detention but also to the grounds. However, such have not been discussed in the lower courts, and even more, to detain a person, depriving him of the opportunity to challenge the restriction of his liberty. It turns out that although the subject of the cassation review is the legality and justification of the judicial act of the court of appeal, nevertheless, the Court of Cassation goes beyond the scope of the subject of review, making the issues that were not discussed in the lower courts the subject of discussion for the first time in the highest court of the country, and regarding which the courts have not expressed a position. In such a situation, we believe a person's right to contest the judicial act against him is severely disproportionately limited. The problem is more aggravated in situations when the decision to leave the appellate complaint unexamined is contested in the Court of Cassation, by which the Court of Appeal does not address the essence of the case at all (Sujyan 2021).

In the case of the current legislative regulations, the problem of s1uspending their execution in the case of appealing judicial acts that do not solve the case, in essence, remains controversial. Thus, on the one hand, Art. 281 of the current Code stipulates that the final judicial act of the court of first instance enters into legal force after the expiry of the period for appeal, in the order of re-examination, if it was not appealed. Other judicial acts of the court of first instance enter into legal force from the moment of publication. Moreover, under a special regulation for the final judicial act made within the framework of judicial guarantees proceedings, it enters into legal force from the moment of its publication and, in the case of proceedings by written procedure, on the day it is made (parts 1 and 2). The same regulation is provided for judicial acts of the appeal court (part 3 of the same article). The 4th and 5th parts of Art. 352 of the same code clearly define that the judicial acts provided by the law and entered into legal force are subject to appeal in the Appellate and Cassation Court, respectively[9].

[9] In the original edition, the above-mentioned norm mentions judicial acts that have not entered into legal force, contradicting the provisions of Art. 281 of the Code. However, before the Code entered into

This regulation is somewhat problematic concerning the execution of judicial acts made as a result of the appeal of the procedural acts of the public participants in the proceedings. In particular, if the complaint is satisfied within the framework of that proceeding, the court either cancels the pre-trial act containing the violation of the individual's right or obliges the body conducting the pre-trial procedure to eliminate the violation of the individual's right. The immediate execution of the judicial act recording the violation of the right seems justified. However, in these cases, the purpose of appealing these acts is problematic because the review of a judicial act that has already produced positive legal consequences for a person and has been carried out may seem untimely and, in some situations, also pointless, as well as cause the judicial act made as a result of the review to be different from the court act of the first instance court impossibility of executing a judicial act. In this regard, the developed practice is also ambiguous (Ghazinyan, Danielyan 2022).

The current Code set forth the mechanism of exclusive review based on new or newly discovered circumstances and fundamental violations. The innovation worth mentioning in this regard is that, in the case of previous legislative regulations, the proceedings based on a fundamental violation were not an independent and separate type of review, and depending on the circumstance under which instance the review was carried out, the norms of the sections regulating the proceedings in the Appellate and Cassation Courts were applicable accordingly. In other words, an illegal situation was created when revising legal acts based on a fundamental violation, not only differentiated, but procedural procedures that did not derive from the nature of this form of review were applicable. Therefore, the current Code has distinguished the exclusive review and the proceedings based on fundamental violations within it.

As mentioned above, the first chapter of the section dedicated to judicial review (Chapter 45 of the Code) provides general conditions for judicial review. The analysis of the norms of this chapter shows that they regulate separate issues related to the appeal of judicial acts and the examination of complaints to the extent that they are common to all review structures. Such legislative regulation is also beneficial from the point of view of legislative technique, as it enables the chapters to define the specific structures of judicial review not to be burdened with general provisions related to the appeal of judicial acts and the examination of complaints. Regarding the specifics of appealing judicial acts and examining complaints within the framework of specific structures of judicial review, these are governed by the norms outlined in the relevant chapters.

Referring to the issues related to the sub-stage of the appeal of judicial acts, we consider it necessary to note that the subject of the appeal for judicial review, the deadlines for filing an appeal, the scope of subjects entitled to appeal, the requirements for the form and content of the appeal, the requirements for the form and content of the appeal, are clearly defined in the Code within the framework of the general conditions and the norms defining the specific structures the procedure to bring.

The general terms of judicial review also define the grounds for re-examination, cassation, and special review (Art. 354 of the Code). This legal norm eliminated the defect of the previous Code when the basis of the violation of international law was included under the violation of substantive law. At the same time, international law contains not

force, the amendments and additions made by the law adopted on June 9, 2022, it was clarified that it refers to legally effective judicial acts.

only substantive but also procedural norms. In addition, the Code legally provides not only judicial error as a basis for appeal but also the existence of a fact or circumstance that renders the judicial act illegal. The exclusive review chapter sets out the grounds for appealing an exclusive review.

One of the features of the regulation of procedural legal relations in the sub-stage of judicial appeal, given in the current Code, in the case of a judicial review presupposing the existence of a clear appeal period, is the provision of the possibility of bringing an additional appeal for judicial review before the end of the appeal period (Part 3 of Art. 355 of the Code), in which the appellant may specify additional grounds for the complaint, additional facts confirming the grounds of the complaint, as well as additional, including new, arguments supporting them.

As for the limits of judicial review, according to Art. 359 of the Code, appeal and cassation are carried out within the limits of the basis stated in the complaint and the facts supporting it. Thus, the legislator bound the reviewing court only with the grounds of complaint and the facts supporting them, not with arguments. As for the review model, in the conditions of the limited re-examination and cassation model, nevertheless, the legislator has allowed the superior court, in the interest of the accused, to leave the boundaries of the appeal or cassation complaint in the presence of clearly defined grounds in the law, that is, after the publication of the judicial act of the lower court, it is discovered is a circumstance excluding criminal prosecution, it is found that the accused's act was given a wrong legal assessment, grounds for the unconditional cancellation of the court act are found, it is found that the accused was sentenced to a type of punishment not provided for by the law for the crime attributed to him, or the sentence imposed on him was incorrect has been calculated, the basis for annulment or modification of the appealed judicial act also applies to the accused who did not appeal the judicial act.

By defining the prohibition to fill in the grounds of the complaint and the facts supporting them during the court proceedings, the legislator promotes the legitimate interest of the parties to exercise due diligence to protect their rights. However, at the same time, taking into account the existence of a legitimate interest in correcting judicial errors, it has foreseen the possibility of going beyond the limits of the grounds of the complaint and the facts supporting them. From the point of view of the settlement of the above-mentioned problem, the legislator has abandoned the extreme legal regulations. The Appellate Court reviews the judicial act exclusively within the limits of the grounds and justifications of the complaint. Therefore, the public interest in correcting judicial errors in specific cases is ignored and disproportionately prevails. This arises from the principle of management (disposition) the interest of the parties to exercise due diligence in protecting their rights or where the court's jurisdiction is provided to go beyond the complaint in any matter at its discretion. At the same time, the same norm regarding the special review provides that the special review is carried out within the limits of the ground stated in the complaint and the facts supporting it. It follows from the above-mentioned legislative regulations that the legislator has provided for the possibility of going beyond the limits of the complaint only in the conditions of re-examination or cassation, while in practice, the need for this may also arise in the case of a special review. For example, during the examination of a complaint brought against a judicial act made as a result of the examination of a motion to apply detention as a preventive measure, grounds for the unconditional annulment of the judicial act may be found that are not mentioned in the complaint (for example, the court

proceedings were conducted in the absence of a defense attorney, when his participation was mandatory according to the law, the right of the accused to use mother tongue and the services of an interpreter was violated in the court. Meanwhile, in the case of the current regulation, the court conducting the review illegally will be deprived of the opportunity to evaluate the mentioned circumstances if they are not mentioned in the complaint.

The Code clearly defines the review procedure within each of the structures, the grounds for revoking and amending the judicial act, and the scope of the judicial acts made as a result of the review, that is, the powers of the reviewing court. About this last question, perhaps a significant innovation should be considered the legislative regulation that obliges the Appellate Court to annul the judicial act and transfer the proceedings to a new examination in all cases where it finds out that the legal assessment of the accused's act is incorrect due to leniency, or the accused's the legal assessment regarding the acquittal or termination of criminal prosecution against him is not correct because the act contains any crime, or there is no circumstance excluding the criminality of the act (instead of being convicted, the accused was acquitted or the criminal prosecution against him was terminated). Moreover, failure to observe the above-mentioned rule is a mandatory basis for accepting the appeal brought against the judicial act of the Appellate Court, as apparently a severe judicial error.

3. Conclusions

In summary, we can state that the existing Criminal Procedure Code of the Republic of Armenia has moved in the direction of clarifying the functions of the review of judicial acts, providing review structures and procedures arising from each of these functions. Despite the problems in practice with regard to separate legislative regulations, the Code has clearly distinguished between ordinary and exceptional modes of review of judicial acts, as well as substantive and non-settled judicial acts. At the same time, this separation was carried out not only based on terminological separation, but due to the peculiarities of each of these forms of review, the procedural procedures for appeal of judicial acts and examination of complaints were also distinguished.

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Received: July 31, 2024
Accepted: October 30, 2024

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