

## CASSATION PROCEEDINGS IN CRIMINAL PROCEEDINGS OF THE RUSSIAN FEDERATION AND TURKMENISTAN

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### Abstract

The main content of the study is devoted to a comparative analysis of the provisions of the criminal procedure code of the Russian Federation and Turkmenistan on cassation proceedings. The cassation proceedings, as an independent legal institution, are part of a single branch of criminal procedural law in Russia and Turkmenistan, and are sets of homogeneous criminal procedure rules governing all sets of issues related to the appeal of a court sentence.

With the adoption of the new Criminal Procedure Code of Turkmenistan, the cassation institute in the criminal process of Turkmenistan has undergone a very positive modernization. A full-fledged judicial investigation appeared in the cassation proceedings of Turkmenistan.

Issues regarding the procedures for appealing and bringing a sentence to a court of cassation in the Russian Federation and Turkmenistan, subjects of a cassation appeal in Russia and Turkmenistan, subjects of reviewing decisions in the Russian Federation and Turkmenistan, terms of a cassation appeal in the Russian Federation and Turkmenistan are investigated. The terms of consideration of the complaint and representation in the court of cassation instance of the Russian Federation and Turkmenistan, as well as the powers of the court of cassation instance in the Russian Federation and Turkmenistan are investigated in detail. The available points of view on the procedural nature of the review of judicial decisions in criminal cases are considered. Considered in detail the opinions of the authors regarding the deadline for filing a cassation appeal to the court of cassation in the Russian Federation, some consider positive the abolition of the time limit for filing a complaint, since drawing up a cassation appeal is a very multi-step process, and it can be insufficient for one year.

As a result of the study of the indicated questions, the corresponding conclusions and suggestions were made.

**Keywords:** cassation proceedings, sentence review, judicial decisions, legal force, justice, court activities, court powers, petition, determination, submission, court sentence, complaint, violation of rights, interrogation of the victim, judicial investigation, cassation instance, complaint, representation.

### 1. INTRODUCTION

In criminal proceedings the cassation institution must guarantee the consistency of court decisions, immediate correction of judicial errors, protection of the rights and freedoms of persons whose interests have been violated by a court decision. The Cassation Institute has come a long way, but its formation is not even

close to optimal completion. In the cassation instance some issues of legal proceedings remain insufficiently resolved and attract the attention of the judicial community and scientists.

Many modern scientists agree that there are some problems, which must be resolved at the present time in the criminal process of Russia in the proceedings in the court of cassation: 1) detection, also correction of violations of the law committed in a criminal case; 2) a guarantee of the stability of the sentence. Therefore, from the standpoint of the need to create the necessary conditions for the implementation of the tasks, it is necessary to determine the upcoming ways of development of the cassation proceedings.

In connection with the adoption of the new Code of Criminal Procedure of Turkmenistan, the meaning of the cassation proceedings has changed, which requires further study. On January 1, 2013, the provisions of the Code of Criminal Procedure of the Russian Federation were amended by Federal Law No. 433-FZ; in this connection, a new chapter 47.1, "Proceedings in the Court of Cassation" was introduced, thus, the cassation proceedings acquired new content.

In accordance with paragraph 14 of Art. 5 of the Code of Criminal Procedure of the Russian Federation, the cassation instance is a court that is authorized to examine cases on complaints and representations of court decisions that have entered into legal force. In connection with the change in the meaning of cassation, there is a need for additional study and comprehension. The court of cassation now on appeal or representation verifies the legality of the verdict, ruling or order of the court that has entered into legal force. Formally, the validity is not subject to verification by the court of cassation.

## **2. MAJOR CHANGES IN CASSATION PROCEEDINGS**

### **2.1 Comparative legal analysis of cassation proceedings: Turkmenistan and Russian Federation**

In accordance with Article 105 of the Constitution of Turkmenistan, the parties have the right to appeal decisions, sentences and other decisions of the courts of Turkmenistan.

In 2009 on April 18, the new Code of Criminal Procedure of Turkmenistan was adopted. Before the adoption of the new law, the criminal procedure code of the Turkmen Soviet Socialist Republic, established on December 22 in 1961, was in force in the country. With the adoption of the new law, the cassation institution underwent a modification. A full-fledged judicial investigation appeared in the cassation instance, in which the interrogation of the witness (victim) became possible. The provisions on the proceedings in the court of cassation are enshrined in chapters 44 and 45 of the Code of Criminal Procedure of Turkmenistan. In the Russian Federation provisions on cassation proceedings in criminal proceedings are specified in chapter 47.1 of the Code of Criminal Procedure.

In accordance with Article 436 of the Code of Criminal Procedure of Turkmenistan, the court of cassation examines complaints or representations of court sentences that have not entered into legal force.

The question of the possibility of expanding the subject of verification should be resolved during the cassation proceedings in order to provide a solution to the problem of identifying and correcting violations of the law in criminal proceedings.

In present time the courts of cassation in accordance with article 401.1 of the Code of Criminal Procedure, should only verify the legality of the sentence. In scientific works, the points of view on the probability of introducing justice and the validity of the sentence into the subject of verification in the cassation proceedings turned out to be opposite.

In addition Potapov V.D. was not a follower of the expansion of the subject of verification in the cassation proceedings, since this does not correspond to the stability of the sentence, which entered into legal force. Borodina T.G. says that: "there is no reason to say that all tasks are fully implemented by the cassation."

In accordance with part 2 of Article 436 of the Code of Criminal Procedure of Turkmenistan, the acquitted, convicted, their lawyers and legal representatives, the victim and his representative have the right to appeal the verdict to the cassation court.

According to Part 3 of Art. 436 of the Code of Criminal Procedure of Turkmenistan, the right to bring a submission is vested in the public prosecutor who participated in the proceedings, or the prosecutor of the relevant etrap (district), city with the rights of etrap (district), the prosecutor of the velayat (region) and the city with the rights of the velayat (region), their deputies, General the prosecutor and his deputies. In that case, the right to appeal the verdict is granted not only to the public prosecutor, but also to the prosecutor who did not participate in the trial. This rule has an effect on increasing the efficiency of the cassation

proceedings.

Many foreign criminal proceeding systems of the continental type, including the Russian legal system, are using “pure cassation”, which involves checking court decisions only on legal grounds, that is, solely in connection with a violation by a lower court of procedural or substantive law.

The court’s assessment of the evidence collected is not characterized by a pure cassation, it does not provide for the court to consider the actual side of the case and, without conducting a judicial investigation, is limited to verifying the court’s decision.

The form of cassation proceedings enshrined in chapters 44 and 45 of the Code of Criminal Procedure of Turkmenistan does not limit the cassation court by considering only questions of the application of law. The court has the right to evaluate evidence and establish factual circumstances. Interrogation of victims or witnesses is also allowed in order to verify the evidence in the case.

Article 439 of the Code of Criminal Procedure of Turkmenistan indicates the timeframe for bringing a submission or appealing a sentence. In accordance with this article, a complaint and a presentation can be brought within 10 days from the day of the pronounced sentence, in the case when the convicted person is in custody, the time period for appealing the sentence is calculated from the day the convicted person is handed a copy of the sentence. If the deadline for submitting a complaint and presentation is missed, they are left without consideration and returned to the person who filed the complaint or brought a presentation. Before starting the consideration of the case in the court of cassation, written objections, additional cassation complaints or representations may be filed.

In the Russian criminal process, the deadline for filing a cassation appeal in a criminal case is unlimited. A cassation appeal is filed in the manner established by Articles 401.1 - 401.4 of the Code of Criminal Procedure.

In this case, the legislation of Turkmenistan confines the time limit for filing a cassation appeal, while the Russian legislation does not restrain the time limit for filing a complaint.

Part 3 of Art. 401.2 of the Code of Criminal Procedure previously suggested that the judgment was subject to appeal in a court of cassation from the moment it entered into legal force for one year.

This period was checked at the stage of accepting the cassation complaint or presentation and, subject to non-compliance with the deadline, the cassation complaint or presentation was returned without consideration. With the amendment of the criminal procedure law, this period was canceled. The state of legal certainty is threatened, since there is no specific time limit for appealing court decisions, given the authority of the court of cassation, the court decision may be revised at any time or its legal force canceled.

In the criminal procedural literature there are statements according to which the cancellation of this period is recognized as positive. So, Omarova A.S. notes, that the provision of Part 3 of Art. 401.2 of the Code of Criminal Procedure, which was in effect until January 2015, restrained the freedom of appeal. She also said that: “one year is not always sufficient to prepare complaints, since the appeal is sufficiently multi-stage”.

The Presidium and the Judicial Collegium for Criminal Cases of the Supreme Court of Turkmenistan should consider the case, no later than one month. This term may be extended by no more than one month in exceptional cases by the President of the Supreme Court of Turkmenistan or his deputy.

In accordance with article 401.9 of the Code of Criminal Procedure, the term for consideration of a cassation appeal and presentation must not exceed two months if a criminal case has been claimed. A cassation appeal and a presentation shall be considered in the Supreme Court of the Russian Federation within two months if a criminal case has not been claimed, if a cassation appeal has been requested and the presentation shall be considered no more than three months.

## **2.2 Rights and powers of the court of cassation**

The powers of the court of cassation in Turkmenistan are established in Article 450 of the Code of Criminal Procedure of Turkmenistan. The court of cassation has the right at the request of the parties: to appoint a forensic psychiatric examination or other examination, and also the right to seek documents that are related to the state of health, marital status and data on the previous convictions of the convicted person.

At the same time, the court, at the request of the parties, has the right to interrogate the witness (victim). In this case, the participation of the convicted person in a court session is mandatory.

In article 401.16. The Code of Criminal Procedure of the Russian Federation contains provisions on the limits

of the rights of a court of cassation. The cassation court has the right to fully verify the criminal proceedings. If several persons have been convicted and only one of the convicts has filed a complaint or a submission has been brought in respect of some of them, the court of cassation has the right to verify the criminal case against all convicted. The court of cassation during the criminal case has the right to commute the sentence imposed on the convicted person or apply the criminal law on a less serious crime. When the criminal case returns to a new trial, the cassation court must indicate the court to which the criminal case is being returned.

By analyzing article 450 of the Code of Criminal Procedure of Turkmenistan, we can conclude that the title of the article does not entirely correspond to its actual content. This article deals with the procedure for considering a case in a court of cassation. The powers of the cassation instance are reflected in Articles 451 and 453 of the Code of Criminal Procedure of Turkmenistan.

The powers of the court of cassation are also defined in article 444 of the Code of Criminal Procedure of Turkmenistan, in accordance with this article, a court that examines a criminal case in cassation can verify the verdict in the part in which it was appealed or presented, and in respect of the convict whose interests were affected by the complaint or submission.

The rights and legal interests during the consideration of the case, the cassation court has the right to set aside or change the sentence, in case of violations that led to the issuance of an illegal sentence, in the part that has not been appealed or brought representation.

Among the pressing problems can also be attributed to the determination of an acceptable ratio between the dispositive and the audit principles in the cassation court method.

It is important to note that in each criminal procedure system participants in the process should have the right to review the case at a higher instance, namely a full review, which includes the possibility of a direct examination of evidence and assessment of evidence. For example, the Soviet criminal process did not provide this right, since the Soviet cassation ruled out completely a second trial.

### **3. CONCLUSIONS AND SUGGESTIONS**

As a result of the study of the cassation proceedings in the criminal process of the Russian Federation and Turkmenistan, next conclusion can be made: the "Soviet cassation" in the Criminal Procedure Code of Turkmenistan has been improved and transformed into a full-fledged higher court of appeal type. Chapters 44 and 45 of the Code of Criminal Procedure of Turkmenistan look like one of the best sections, nevertheless, the transformation of the content of the "Soviet cassation" into a "western appeal" requires the optimization of Soviet "supervision" and the transformation of its kind of German audit or French cassation.

As noted earlier, the deadline for filing a cassation appeal has not been established in the Russian Federation; many scientists speak of the need to restore in the criminal procedure law a one-year deadline for filing a complaint to verify a court decision in a criminal process. One-year period is not sufficient to prepare complaints, since appeals are often very complex.

Considering the powers of the court of cassation in the Russian Federation and Turkmenistan, we can conclude that the powers of the court of cassation in Turkmenistan are indicated in several articles of the Code of Criminal Procedure of Turkmenistan. The provisions referred to in Articles 451 and 453 of the Code of Criminal Procedure of Turkmenistan require the need to be reflected in Article 450 of the Code of Criminal Procedure of Turkmenistan.

It is necessary to amend article 401.9 of the Code of Criminal Procedure of the Russian Federation "Dates of consideration of a cassation appeal, submission" in order to comply with the principle of a reasonable time for criminal proceedings in a cassation instance, reduce the time for consideration of cases, and strengthen the protection of the rights and legitimate interests of the person. Thereby, the second part of this article should be stated as follows: "a cassation appeal, representation in the Supreme Court of the Russian Federation shall be considered within a period not exceeding two months from the date of their receipt".

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