

Mammadli Lala Firdovsi,

PhD candidate in “Administrative Law, Financial Law, Information Law”,

Department of Constitutional Law, Faculty of Law, Baku State University Attorney

at “Sirius” Law Office, Lecturer, Academy of the State Customs Committee,

Republic of Azerbaijan

Address: 2 Zabrat-Mashtagha Highway, Mashtagha Settlement, Sabunchu District, Baku

E-mail: mammadlilala25@gmail.com

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CASSATION REVIEW OF CLAIMS CONCERNING GENERAL ACTIONS FOR PERFORMANCE IN ADMINISTRATIVE PROCEEDINGS

Açar sözlər: inzibati məhkəmə icraatı, kasasiya icraatı, öhdəliyin icrası haqqında iddia, inzibati mübahisə, məhkəmə müdafiəsi, inzibati orqanın hərəkətsizliyi, hüquqi müdafiənin səmərəliliyi.

Ключевые слова: административное судопроизводство, кассационное производство, иск об исполнении обязательства, административный спор, судебная защита, бездействие административного органа, эффективность правовой защиты.

Keywords: administrative judicial proceedings, cassation proceedings, action for performance, administrative dispute, judicial protection, administrative inaction, effectiveness of legal protection.

INTRODUCTION

In a modern state governed by the rule of law, ensuring the legality of the activities of administrative bodies and the effective protection of individuals' rights and legitimate interests is of significant importance. The judicial

resolution of disputes arising in administrative legal relations is one of the main means of ensuring the rule of law. In this regard, mechanisms for reviewing the legality of decisions adopted in administrative judicial proceedings are of particular importance. Among these mechanisms, the activity of the court of cassation occupies an important place.

By reviewing the compliance of judicial acts adopted by lower courts with substantive and procedural legal norms, the court of cassation ensures the proper application of law. This institution serves not only to eliminate legal errors in a specific case, but also to contribute to the formation of uniform judicial practice and the maintenance of legal certainty. In particular, actions for performance constitute one of the widespread categories of disputes in administrative legal relations and are of considerable importance from the perspective of judicial control over the fulfillment of legal duties imposed on administrative bodies.

The cassation review of actions for performance is of particular relevance in terms of examining the legality of judicial decisions ad-

opted in disputes falling within this category, ensuring the correct application of legal norms, and forming uniform judicial practice. From this perspective, the study of this topic is of both theoretical and practical significance and plays an important role in increasing the effectiveness of administrative judicial proceedings and improving mechanisms of legal protection.

The purpose of this study is to analyse, from a scientific-theoretical and normative perspective, the legal nature of the cassation review of actions for performance, the functions of the Supreme Court in this field, and the role of cassation proceedings in administrative justice.

I. The Legal Nature of Cassation Review of Actions for Performance

According to the imperative requirement of the first part of Article 131 of the Constitution of the Republic of Azerbaijan, the Supreme Court of the Republic of Azerbaijan has the status of the highest judicial body for civil, criminal and other cases falling within the jurisdiction of both general and specialised courts [6]. This constitutional status precisely determines the scope and limits of the Supreme Court's activity. Unlike courts of first instance and appellate courts, the Supreme Court does not examine the case on the merits; that is, it does not investigate factual circumstances or reassess evidence. Its main function is to ensure the correct application of law by reviewing complaints lodged against judgments and rulings of appellate courts as a higher judicial instance. In particular, the decisions adopted and explanations provided by the Supreme Court in administrative disputes have a guiding character for lower courts and strengthen the principle of legal certainty.

In legal literature, the essence of the cassation instance is explained in a broader doctrinal context. Cassation is a special legal remedy and means of appeal that ensures the review by a higher court of final decisions rendered by a

lower court, or of the acts forming the basis of such decisions, solely from the perspective of their compliance with law [10, p. 855]. In this regard, two inseparable functions can be observed in the activity of the Supreme Court: private and public functions. The private function involves examining whether substantive and procedural legal norms have been correctly applied in a specific dispute. The public function, by contrast, goes beyond the interests of individuals and serves the formation of uniform judicial practice and the continuous development of law.

Azerbaijan's administrative procedural legislation establishes a relatively liberal regime for lodging cassation complaints. Pursuant to Article 90.1 of the Administrative Procedural Code, the right to file a complaint with the Administrative Chamber of the Supreme Court against decisions of the appellate court is recognised, and no "leave system" is envisaged in this regard. However, in international practice, particularly in European countries, filter mechanisms are used in order to reduce the workload of supreme courts and to select only cases of fundamental legal significance. A leave-based appeal system makes the lodging of a cassation complaint dependent on prior authorisation by the court where certain special conditions are met.

One of the clearest examples of this model is the Swedish administrative court system. In Sweden, administrative judicial proceedings are structured on three levels, and appeals to higher instances are, as a rule, subject to special permission, namely leave to appeal. In the 1990s, this system began to be applied in order to regulate the excessive workload that had arisen in the Swedish Supreme Administrative Court and the Administrative Courts of Appeal. According to Article 35 of the Swedish Administrative Procedural Act, permission must necessarily be granted for an appeal against a decision of the Administrative Court of Appeal (Kammarrät-

ten) to be examined by the Supreme Administrative Court (Högsta förvaltningsdomstolen). If the court does not identify any precedential legal significance in the examination of the case and does not grant leave, the decision of the lower instance remains in force immediately. Thus, the Swedish model enables judicial resources to be allocated more efficiently and allows the highest instance to focus its attention only on issues that are important for the development of law.

In international practice, different legal mechanisms are applied for lodging cassation complaints. Under Austrian administrative procedural legislation, the appellate court must indicate in its decision whether cassation review is available. Even if the decision states that an appeal is not admissible, interested parties retain the right to apply directly to the Supreme Administrative Court, which demonstrates the flexibility of the system.

In the French system, a “filtering” method is applied in the process of applying to the Council of State (Conseil d’État). Pursuant to Article L.821-1 of the Code of Administrative Justice, appeals against decisions rendered at last instance are initially examined from the perspective of admissibility [14]. Applications that do not contain serious legal arguments are rejected without proceeding to the examination stage. This approach not only prevents an artificial increase in the workload of courts, but also minimises unjustified loss of time [8, p. 222].

In German law, Article 132 of the Law on Administrative Court Proceedings establishes a leave-to-appeal system for cassation complaints [13]. Under this provision, the admissibility of the complaint requires that the case be of fundamental importance, that the decision depart from the existing precedents of higher judicial instances, such as the Federal Administrative Court or the Constitutional Court, or that there be procedural defects affecting the substance of

the decision. According to the position of the European Court of Human Rights, such filtering mechanisms are not regarded as a restriction of the individual’s right of access to a court.

Unlike the European countries mentioned above, Azerbaijan’s administrative procedural system has chosen a more liberal and simplified path. Domestic legislation does not provide for special permission from the appellate court or a “filtering” review subject to strict requirements for lodging a complaint. If the complaint complies with the technical and procedural requirements established by law, it must be sent directly to the Supreme Court.

II. Specific Features of Cassation Review of Actions for Performance

When assessing the possibilities of lodging a cassation complaint against a decision of the appellate court in actions for performance, the requirements of Article 99 of the Administrative Procedural Code of the Republic of Azerbaijan must first be taken into account. Through this provision, the legislator has introduced certain procedural limitations on the right of access to the cassation instance. Thus, cassation complaints against certain interim rulings adopted in order to ensure the proper conduct of court proceedings are excluded [5]. This constitutes a mechanism aimed at preventing the artificial prolongation of judicial proceedings and increasing the efficiency of the process.

The Supreme Court’s power to examine a cassation complaint is not absolute and is limited by specific boundaries established by law. Pursuant to Article 91 of the Administrative Procedural Code, the cassation instance examines the dispute only within the limits of the complaint. At this stage, the main task of the Supreme Court is to review whether any error was committed in the application of substantive or procedural legal norms by the appellate court. At the same time, Article 94.2 of the Code imposes on the parties

the obligation to substantiate the complaint [5].

A combined analysis of these provisions shows that a cassation complaint should not consist merely of a mechanical enumeration of legal norms. As emphasised in Ruling No. 01/2023 of the Supreme Court “On the Admissibility of Cassation Complaints in Administrative Judicial Proceedings”, the complainant must describe in detail, in connection with the circumstances of the case, which specific legal norm the conclusion reached by the appellate court contradicts and why. In other words, the essence of the legal violation must be substantiated, and the legal groundlessness of the appellate decision must be demonstrated [1].

A similar approach can also be observed in the German system of administrative justice. Article 137 of the German Law on Administrative Court Proceedings defines the limits of cassation review [11]. The content of this provision corresponds to Azerbaijani legislation in that it establishes that the function of the cassation instance is limited to reviewing appellate decisions solely from the perspective of their compliance with law. Thus, both in the domestic legal system and in advanced European legal systems, the cassation instance acts not as a body reviewing factual circumstances, but as the highest supervisory authority over the application of law.

The exercise of the right to legal protection at the cassation instance is closely connected not only with compliance with formal requirements, but also with the substantiation of the complaint. As noted in Ruling No. 01/2023 of the Supreme Court of the Republic of Azerbaijan, complaints lodged against decisions rendered in accordance with already established judicial practice, and which are not based on any new legal argument, are of a “formal” nature [1]. Such unfounded complaints lead to an excessive burden on the judicial system, delay the restoration of individuals’ rights and, ultimately, undermine the

stability of uniform judicial practice. Therefore, a cassation complaint must reflect not only the subjective dissatisfaction of the parties, but also serious arguments serving the development of law.

In international practice, the admissibility of cassation complaints is regulated by different criteria. For example, in the administrative justice practice of the Republic of Türkiye, in disputes concerning monetary claims, the availability of cassation review depends on the amount claimed [9]. This functions as a form of “economic filter”, enabling the highest judicial instance to direct its resources towards cases of greater importance.

In the Azerbaijani legal system, the admissibility of the complaint must be examined as a preliminary condition for the commencement of cassation proceedings. Before examining whether the appellate decision complies with substantive and procedural law, the Supreme Court determines whether the complaint itself is admissible. In this process, the parties’ “right to be heard” must necessarily be ensured. In accordance with the spirit of Article 16.3 of the Administrative Procedural Code, before a ruling is adopted declaring a cassation complaint inadmissible, the participants in the proceedings must be given an opportunity to express their position [7, p. 603].

One of the most critical factors determining the admissibility of a cassation complaint is compliance with procedural time limits. The legislation grants participants in administrative judicial proceedings the right to lodge a complaint against a decision of the appellate court within one month, and against a ruling within ten days. The running of this period begins from the moment the judicial act is officially served, and for users of the “Electronic Court” system, from the moment the document is placed in the electronic cabinet.

Failure to comply with the time limit without a valid reason results in the complaint be-

ing declared inadmissible. For example, in the Supreme Court's decision of 25 January 2024, No. 2-1(102)-776/2024, concerning the calculation of a pension, the cassation complaint was declared inadmissible precisely because the procedural time limit had been missed and there was no valid reason for its restoration [4]. Thus, compliance with the time limits established by law is a fundamental condition for exercising the right to judicial protection.

One of the fundamental conditions determining the admissibility of cassation proceedings is that the complainant must have the relevant procedural status. Article 90.2 of the Administrative Procedural Code of the Republic of Azerbaijan regulates this issue in mandatory terms. According to the legislation, the right to lodge a cassation complaint belongs exclusively to persons who participated in the case before the appellate court. If a person was not involved in the appellate proceedings, they do not have the right to apply in cassation, and such applications are rejected as inadmissible.

The established case law of the Supreme Court also confirms this approach. For example, by its decision of 22 December 2023, No. 2-1(102)-2798/2023, in a dispute concerning the issuance of a certificate relating to property rights, the Supreme Court declared inadmissible a complaint lodged by a person who had no procedural status. This constitutes an important mechanism for protecting judicial proceedings from external interference and for ensuring that only participants whose rights are directly affected may apply to the court.

In addition, strict formal requirements exist regarding the drafting and submission of cassation complaints. The principle of professional representation is of particular importance in administrative judicial proceedings. According to the requirements of the legislation, a cassation complaint against acts of the appellate court

must necessarily be drafted and signed by an advocate. Violation of this requirement leads to the complaint being declared inadmissible without examination on the merits.

The importance of this requirement was also clearly emphasised in the Supreme Court's decision of 5 April 2024, No. 2-1(102)-713/2024. In a claim concerning the payment of a disability labour pension, the complaint lodged against the court decision was declared inadmissible precisely because it had not been drafted and signed by an advocate [3]. Such strict formal requirements serve to preserve the high level of legal professionalism of the cassation instance and to prevent unfounded applications.

In conclusion, failure to comply with the legislative requirements concerning both the composition of the subjects entitled to complain and the form of the document limits the person's possibilities of legal protection and results in the complaint remaining outside judicial examination.

Where no legal obstacles to the admissibility of a cassation complaint are identified, the case is, as a rule, examined by the Supreme Court in written proceedings. At this stage, the receipt of professional legal assistance constitutes a mandatory requirement. Article 136 of the German Law on Administrative Court Proceedings establishes more specific and higher standards in this regard. Thus, before the Federal Administrative Court, the parties must be represented either by advocates or by law professors qualified to hold judicial office [13]. This requirement aims to ensure professional representation corresponding to the complex legal nature of the cassation instance.

Pursuant to Article 96.5 of the Administrative Procedural Code of the Republic of Azerbaijan, if the Supreme Court considers it necessary for the examination to be continued, it may quash the lower-instance decision and remit the case to

the appellate court for reconsideration [5]. Such necessity mainly arises in two situations: where, due to serious procedural defects before the appellate court, a broad re-examination of the evidence is required, or where the appellate court has not adopted a decision on the merits of the case.

French practice grants the Council of State broader room for manoeuvre in this matter. According to Article L.821-2 of the French Code of Administrative Justice, after quashing a decision, the Council of State either remits the case to the competent court or, in the interests of the proper administration of justice, resolves the dispute on the merits itself. If the complaint comes before the Council of State for a second time, it must necessarily adopt a final decision [14].

According to Article 49 of Türkiye's Law on Administrative Judicial Procedure, the Council of State conducts cassation review only on legal grounds. The complaint must mainly be based on the unlawfulness of the decision in terms of competence, form, reason, subject matter and purpose. In Türkiye, a thirty-day time limit is also provided for cassation complaints, and the proceedings are conducted mainly in writing, while oral proceedings are held only in exceptional cases [11].

An analysis of international and domestic legislation shows that the cassation instance may adopt four types of final decisions:

1. to uphold the appellate decision without changes;
2. to modify the decision;
3. to quash the decision and adopt a new decision;
4. to quash the decision and remit the case for reconsideration.

In Azerbaijani judicial practice, the Supreme Court's decision of 31 January 2025, No. 2-1(102)-260/2025, may be cited as an example of the latter situation. In a case concerning the

recalculation of a pension, the appellate court had failed to fully examine the facts; therefore, the Supreme Court partially quashed the decision and remitted the case for re-examination [2]. This demonstrates that the Supreme Court's function of legal supervision is not limited solely to the application of legal norms, but also requires that the necessary examination be carried out for the establishment of the substantive truth.

In the system of administrative justice, the uniform application of legislation to disputes of the same type forms the basis of the principle of legal certainty. In Italian practice, this function is performed by the Consiglio di Stato, namely the Council of State. Acting as a cassation instance, it both supervises the interpretation and correct application of legal norms and functions as a central body ensuring the formation of uniform judicial practice throughout the country.

In the Republic of Azerbaijan, the normative basis for ensuring the unity of practice in the application of law in administrative judicial proceedings is reflected in Article 98-1 of the Administrative Procedural Code. This provision grants important powers to the Administrative Chamber of the Supreme Court. To date, two fundamental rulings have been adopted by the Administrative Chamber of the Supreme Court in this direction:

1. the Ruling of the Supreme Court of the Republic of Azerbaijan dated 6 November 2023, which clarifies the criteria for the admissibility of cassation complaints in administrative judicial proceedings;
2. the Ruling of the Supreme Court of the Republic of Azerbaijan dated 17 February 2022, which regulates the involvement of third parties in proceedings and their right to use legal remedies.

Assigning to the Supreme Court the function of preventing courts from adopting conflicting positions in identical or analogous disputes

fully corresponds to international standards. Opinion No. 11 of the Consultative Council of European Judges, dated 18 December 2008, on the “Quality of Judicial Decisions”, states that in countries belonging to the Continental European legal system, the unity of judicial practice must be ensured precisely by the Supreme Court [12]. Unlike the Anglo-Saxon system, this approach serves the hierarchical structure of legislation and the stability of law.

As the highest level of Azerbaijan’s administrative court system, the Supreme Court performs this task both through generalising rulings and through decisions adopted in specific cases. The adoption by the Supreme Court, up to the time of preparation of this article, of 52 decisions determining uniform judicial practice constitutes an important stage in the development of administrative law in our country and in ensuring the predictability of judicial decisions. These decisions serve as a legal compass for lower courts and enhance the quality of the administration of justice.

Conclusion

The conducted scientific and legal analysis demonstrates that the cassation review of actions for performance constitutes a systematic stage of administrative judicial proceedings. As a cassation instance, the Supreme Court of the Republic of Azerbaijan does not re-examine factual circumstances, but rather exercises control over the correct application of substantive and procedural legal norms.

Since actions for performance concern compelling administrative bodies to carry out acts of a factual nature, the legal precision and enforceability of court decisions are of particular importance in this category of cases. In this field, the cassation instance not only supervises the correct application of law, but also acts as an important safeguard mechanism ensuring the legality of the activities of administrative bodies. The legal po-

sitions formulated by the Supreme Court create conditions for lower courts to apply a uniform approach in identical or similar disputes.

The comparative legal analysis shows that in a number of European countries, the cassation instance performs the function of forming precedent-like decisions aimed at the development of law and focuses only on cases of fundamental importance. In the Republic of Azerbaijan, although the broader guarantee of the right to lodge a cassation complaint may be assessed positively from the perspective of the realisation of the right to judicial protection, this further increases the relevance of the Supreme Court’s function of ensuring uniform judicial practice.

The effectiveness of cassation proceedings in actions for performance is determined, first of all, by the quality of legal review, the level of reasoning of court decisions, and the consistent application of the legal positions formulated by the Supreme Court. As a result of the study, the following proposals are put forward:

1. The introduction of an initial legal filter mechanism for cassation complaints may be considered appropriate. A comparative analysis of the administrative procedural legislation of other countries shows that leave or filter mechanisms are regarded as important for increasing the positive impact of the activity of the cassation instance. The application of such a mechanism in the Republic of Azerbaijan may also serve to reduce the workload of the Supreme Court and to ensure supervision over the uniform application of law.

2. It would be appropriate to systematise the legal positions formed by the cassation instance in relation to actions for performance and to prepare special methodological recommendations for this category of cases. In administrative disputes concerning performance, compelling an administrative body to carry out a specific act of a factual nature requires the proper distinction

between legal and factual elements. The generalisation of decisions adopted by the Supreme Court in this field, the determination of uniform

criteria, and the preparation of methodological explanations for lower courts may prevent conflicting approaches in cases of the same type.

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Məmmədli Lalə Firdovsi qızı,

“Sirius” Vəkil Bürosunun vəkili, Azərbaycan Respublikası Dövlət Gömrük Komitəsinin Akademiyasının müəllimi, Bakı Dövlət Universitetinin Konstitusiya hüququ kafedrasının “İnzibati hüquq, maliyyə hüququ, informasiya hüququ” ixtisaslaşması üzrə doktorantı

**İNZİBATİ MƏHKƏMƏ İCRAATINDA ÖHDƏLİYİN İCRASI HAQQINDA İDDİALARA
KASSASIYA QAYDASINDA YENİDƏN BAXILMASI**

XÜLASƏ

Məqalədə öhdəliyin icrası haqqında iddialara kassasiya qaydasında baxılmasının hüquqi mahiyyəti və Azərbaycan Respublikasının Ali Məhkəməsinin bu sahədə həyata keçirdiyi funksiyalar təhlil olunur. Göstərilir ki, Azərbaycan Respublikasının Konstitusiyasına və İnzibati Prosessual Məcəlləsinə uyğun olaraq Ali Məhkəmə kassasiya instansiyası

məhkəməsi kimi aşağı instansiya məhkəmələrinin qəbul etdiyi qərar və qərardadların mahiyyətini deyil, onların maddi və prosessual hüquq normalarına uyğunluğunu yoxlayır. Kassasiya icraatının əsas məqsədi konkret mübahisənin yenidən araşdırılması deyil, hüquq normalarının düzgün və vahid tətbiqinin təmin edilməsidir.

Eyni zamanda vurğulanır ki, Ali Məhkəmə yalnız fərdi hüquqi mübahisələrin həlli ilə kifayətlənmir, həm də vahid məhkəmə təcrübəsinin formalaşdırılması və hüququn inkişafı baxımından mühüm rol oynayır. Öhdəliyin icrası ilə bağlı inzibati mübahisələrdə kassasiya baxışı inzibati orqanların fəaliyyətinin qanunauyğunluğuna nəzarətin mühüm təminat vasitəsi kimi çıxış edir. Bu baxımdan kassasiya instansiyası hüququn aliliyinin təmin olunmasına, hüquqi müəyyənliyin möhkəmləndirilməsinə və şəxslərin hüquq və qanuni mənafelərinin effektiv müdafiəsinə xidmət edən əsas prosessual mexanizmlərdən biri hesab olunur.

Мамедли Лала Фирдовси гыз,

адвокат адвокатского бюро “Sirius”, преподаватель Академии Государственного таможенного комитета Азербайджанской Республики, докторант по специализации «Административное право, финансовое право, информационное право» кафедры конституционного права Бакинского государственного университета

**КАССАЦИОННЫЙ ПЕРЕСМОТР ИСКОВ ОБ ИСПОЛНЕНИИ ОБЯЗАТЕЛЬСТВА
В АДМИНИСТРАТИВНОМ СУДОПРОИЗВОДСТВЕ**

РЕЗЮМЕ

В статье анализируются правовая сущность рассмотрения в кассационном порядке исков об исполнении обязательства, а также функции, осуществляемые Верховным Судом Азербайджанской Республики в данной сфере. Отмечается, что в соответствии с Конституцией Азербайджанской Республики и Административно-процессуальным кодексом Верховный Суд, выступая в качестве суда кассационной инстанции, проверяет не существование решений и определений, принятых судами нижестоящих инстанций, а их соответствие нормам материального и процессуального права. Основная цель кассационного производства заключается не в повторном рассмотрении конкретного спора, а в обеспечении правильного и единообразного применения правовых норм.

Вместе с тем подчеркивается, что Верховный Суд не ограничивается разрешением индивидуальных правовых споров, но также играет важную роль в формировании единой судебной практики и развитии права. В административных спорах, связанных с исполнением обязательства, кассационное рассмотрение выступает важным гарантийным средством контроля за законностью деятельности административных органов. В этом смысле кассационная инстанция рассматривается как один из основных процессуальных механизмов, служащих обеспечению верховенства права, укреплению правовой определенности и эффективной защите прав и законных интересов лиц.

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