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PROCEDURAL AND ORGANIZATIONAL MEANS OF MODERN CASSATION PRODUCTION IN THE CRIMINAL PROCESS OF RUSSIA

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ABSTRACT

As a result of the next stage of judicial reform in the Russian Federation, cassation proceedings in criminal proceedings have been significantly modernized. The modernization affected both organizational and procedural means of cassation proceedings. In the organizational aspect, new cassation instances have been formed, functioning on the principles of extraterritoriality and independence. In the procedural aspect: the multi-level instance cassation review of criminal cases has been changed; the list of cassation appeal subjects has been expanded; the procedure for cassation appeal and consideration of cases was updated, which included new procedural means that significantly expanded the right of citizens to effective judicial protection. All of this indicates the relevance and validity of addressing the topic of this study.

INTRODUCTION.

Among the guarantees of the right to judicial protection, article 46 of the Constitution of the Russian Federation establishes the right of citizens to appeal to the court decisions and actions of state authorities and officials [1]. The implementation of this guarantee shall be made by the higher courts, aimed at identifying and addressing possible miscarriages of justice.

As practice shows, mistakes are often found in final court decisions. In addition, in the practice of the European Court of human rights (hereinafter – the ECHR), when considering appeals from Russian citizens, cases of violations of the Convention on the protection of human rights and fundamental freedoms are regu-

larly identified [2]. This indicates the need and relevance of improving the Russian system for verifying court decisions.

Currently, this system is represented in three levels: appeal, cassation and Supervisory proceedings.

Modern modernization of cassation proceedings has become the next stage of the ongoing Judicial reform in Russia [3]. As a result of legislative changes, the institution of cassation received an updated content and acquired features that are not typical of the classical form of cassation proceedings. This was reflected in the absence of a term for cassation appeal, in the expansion of the subject matter of the criminal case, in the abolition of the preliminary stage of checking the "continuity", in the strengthening of audit funds. New procedural and organizational means of cassation proceedings required their research and analysis at the doctrinal level, which determined the purpose and objectives of this study.

METHODS

The methodological basis of the research was based on the dialectical-materialistic method of cognition of objective reality, so that the subject and object of research are considered in the development and relationship. System-functional and system-structural methods made it possible to consider cassation in the structure of criminal procedure law, to identify its content, and the system connections of its elements.

RESULTS

The requirement to create an effective mechanism for reviewing court decisions that have entered into legal force reflects one of the most important requests of modern Russian society for effective and high-quality judicial protection. This request was expressed in a targeted procedural reform of the courts of cassation, aimed at strengthening "guarantees of the right to judicial protection and improving the effectiveness of the mechanism of legality of judicial decisions in criminal cases" [4].

As the experience of the new cassation instances shows, the reformed cassation has already demonstrated its effectiveness. In criminal proceedings, according to the rules of continuous cassation, about 38% of complaints are satisfied, which is several times higher than the same percentage of complaints that were satisfied by previous cassation instances [5].

Changed organizational approaches to the construction of cassation courts based on the principle of extraterritoriality have strengthened their role and independence.

In the procedural aspect, the mechanism of cassation proceedings has included a number of new procedural tools. In particular, a unified cassation regime has been formed for reviewing decisions of magistrates and decisions issued by district and garrison military courts. This made it possible to ensure equal procedural opportunities to appeal against court decisions in criminal cases for all

subjects and at all jurisdictional levels, and strengthened guarantees for the restoration of citizens' rights violated as a result of judicial errors committed by lower courts.

The new procedure for receiving cassation appeals systematized and ranked the cassation appeal procedure. Differentiated procedure for consideration of cassation complaints, in which the final court decisions are submitted to the cassation courts of General jurisdiction directly, bypassing the pre-selection stage in terms of "continuity" of complaints. For interim court decisions, the stage of preliminary examination by a single judge of the complaint's arguments has been preserved, after which some of the appeals may be rejected as unfounded.

The stage of cassation proceedings has received a new content that allows it to be characterized as an ordinary stage in the criminal justice system.

The procedure for consideration of cassation petitions, which provides for the mandatory holding of a court session of the cassation instance with the participation of the parties, regardless of whether or not there are grounds for their review (in the order of "continuous cassation"), requires the establishment of a special procedural condition – a reasonable period for such an appeal.

DISCUSSION

As you know, each state has the right to independently choose and develop effective procedural remedies designed to identify and eliminate judicial errors. It is quite natural that "it is the highest court that has become the main driving force of judicial reform" [6, P. 138] and on its initiative created new independent cassation courts of General jurisdiction [7].

From an organizational point of view, it was a good decision to build new cassation courts based on the principle of extraterritoriality. This made it possible to significantly strengthen the independence of judges of the cassation courts from any influence from both the Executive power and colleagues working at the regional level of the Russian Federation. As correctly noted in the legal literature: "The main result of modern judicial reform should be an increase in the independence of the judicial system from regional authorities, which, as a result, will deprive regional officials of a sense of impunity and reduce the level of corruption in the state" [8].

From the point of view of the procedural means of cassation proceedings, it should be noted that as a result of the reform, the cassation received both improved former and acquired new procedural means.

A differentiated procedure for consideration of cassation complaints has been introduced. In the first case, the appeal against the final decisions is sent directly to the judicial Board, bypassing the stage of preliminary consideration. This method provides the possibility of participation of the parties in the court session, while the complaint is considered by the court in an expanded manner, regardless of the arguments set out in it. This method is fixed in article 401.7-401.8 of the criminal procedure code of the Russian Federation and is referred to in judicial practice as "continuous cassation".

The second method of checking cassation appeals has retained the procedure for preliminary consideration of cassation appeals by a judge alone, but it is only used for appealing interim court decisions to the cassation courts of General jurisdiction and when filing a complaint (submission) to the Supreme Court of the Russian Federation. This means of appeal is called "selective cassation" and is fixed in article 401.10-401.12 of the criminal procedure code of the Russian Federation.

The stage of cassation proceedings has received a new content that allows it to be characterized as an ordinary stage in the criminal justice system. "...The court of cassation instance acquires the full scope of powers of the usual means of verification..." [9, P.93].

As you can see, the existing model of cassation proceedings in Russia lacks such elements inherent in extraordinary stages as the stage of preliminary consideration of the appeal arguments; the requirement to pass all possible preliminary stages of review; and a complicated mechanism for reviewing the complaint.

Modern cassation is characterized by an expanded subject of consideration, allowing the possibility of entering the court of cassation in the consideration of not only issues of "law", but also issues of "fact". This becomes obvious from the explanations given by the Supreme Court of the Russian Federation on the right of cassation to evaluate arguments about the inadmissibility of evidence on the basis of which the verdict was passed [10].

In the legal literature, this explanation is reasonably regarded as a departure from the strict division of the subject of proceedings into questions of fact and law, which allows avoiding excessive formalism in the activities of the cassation instance and artificially limiting the range of possible violations of the law to be corrected [11, P.28].

Different interpretation of the same categories of law (including "legality") is permissible and justified in the theory of law, but in judicial practice it is necessary to operate with specific and clear concepts. From the content of the article 401.1 of the code should be a definite conclusion that consideration of the cassation appeals, the court of cassation shall review only the legality of the sentence, that is, the correct use when the sentence of criminal law and criminal procedure law. A literal reading of the law means that questions of fact are not subject to verification.

However, the Supreme Court of the Russian Federation understands the legality of judicial decisions as "compliance with the requirements of criminal and criminal procedure laws, taking into account the grounds entailing the cancellation or modification of a court decision. Arguments about the inadmissibility of evidence based on a guilty verdict that influenced the court's conclusions about the actual circumstances of the case require verification. Complaints against the injustice of the sentence, which was the appointed punishment, not disproportionate to the gravity of the offence, the person convicted or assigned to an unfair punishment due to excessive softness or excessive severity, shall be reviewed, if such a decision resulted from incorrect application of the criminal law..." [12].

These positions are echoed in the scientific literature, where it is quite correctly noted: "... the justification of the sentence by inadmissible or incorrectly evaluated evidence is not so much about the legality as the validity of the sentence. Any unsubstantiated sentence is also illegal" [13].

"The exclusion of the cassation court from correcting errors found in the factual side of the verdict is unnatural. The court, deprived of the opportunity to correct the discovered factual error of the verdict, ceases to be a full-fledged body of justice" [14, P. 77].

Positive assessment should be made of the strengthening of audit funds in the activities of the cassation courts, which are entitled to:
not to satisfy the request for revocation of the cassation request received later than the appointment of the court session or after the decision to transfer it for consideration; b) to check the criminal proceedings in full and in respect of all persons in the case.

The audit nature of the judicial activity of the court of cassation allows us to say with the greatest confidence that after the cassation review of the case, the risk of preserving judicial errors in the case will be minimized.

Speaking about the grounds for making private determinations by the court of cassation, it should be noted that in most cases these are cases of gross violation by judges of the norms of the procedural law. For example, the inconsistency of the operative part of the court decision with its descriptive and motivational part, when the introductory and resolute parts of the appeal decision indicate one defendant, and the descriptive and motivational part of the appeal decision contains the reasons for the decision made against another person [15].

Also, the court of cassation found a case where, in violation of the procedural law, the court decision was made without removing the court to the conference room, immediately after the presiding judge had heard the last word of the defendants [16]. There are cases of clearly negligent approach to the registration of important procedural acts. Thus, when making a decision on the case on appeal, the appellate determination of the judicial Board for criminal cases of the regional court was signed by only one judge of the Board, consisting of three judges, which specific judge-it is impossible to determine [17].

These and other cases of violations by lower courts of criminal procedure and criminal legislation, unfortunately, indicate the existence of a problem of poor quality of justice and the need for such means of response by the court of cassation to violations of legislation as private definitions.

From an organizational point of view, an important problem in the initial functioning of the cassation courts should be called the overload of courts with the volume of cassation appeals. Based on the existing "indefinite" procedure for filing cassation complaints to the "new" cassation courts, a flood of appeals concerning criminal cases, on which decisions were made before October 1, 2019, flooded in. It should be recalled that one of the ideas of the authors of the creation

of independent cassation courts of General jurisdiction was to optimize the judicial load, but in practice it turned out that the new courts are overloaded.

Therefore, the legislative initiative of the Supreme Court of the Russian Federation about amendments to the content of the code of criminal procedure article 401.3 "the Procedure and terms of filing an appeal, submission, the order of restoration of term of the cassation appeal deserves support, which provides for a provision stating that the cassation appeal and submission for consideration in the order "solid appeal" can be filed within two months from the date of entry of judgment or other final judicial act in legal force, and convicted detainees in the same period, but from the day of delivery of a copy of the decision [18].

As follows from the legislative novel, the subject of cassation appeal in any case retains the opportunity to appeal on the same or other grounds to a higher court according to the rules of selective cassation to the Supreme Court of the Russian Federation.

Fixing a certain term of cassation appeal is due to a number of the following circumstances:

the procedure for consideration of cassation petitions by the method of "continuous" cassation, requires the establishment of a reasonable period for such an appeal;

implementation of the procedure "solid appeal" leads to the fact that the production in court of cassation loses the character of an exceptional stage of the process, which also involves the need to establish in law deadline appeal; the existence of a pre-trial period for cassation appeal of cases will have a positive impact on the prompt restoration of the violated right.

We believe that the bill proposed by the Supreme Court of the Russian Federation on the introduction of a pre-trial period of cassation deserves approval. This will also meet the requirement of the ECHR that there must be a period of appeal for courts recognized as effective remedies.

Currently, the ECtHR does not recognize the new cassation procedure for consideration of criminal cases as normal remedy, which means that applicants are not required to exhaust it before filing a complaint with the ECtHR [19].

Thus, today Russian citizens have the right to immediately file complaints to the ECHR after an appeal review of their cases.

RESULTS

The mechanism of modern Russian cassation proceedings has been supplemented with improved and new organizational and procedural tools that allow achieving the goals of this production more effectively.

The internal content of cassation proceedings has now acquired all the main features of an ordinary judicial verification stage of the process, requiring the establishment of its time limits, as a mandatory element of the regulation of this stage of criminal proceedings.

The absence of a curtailment period for cassation appeals has led to the exclusion from the national system of legal remedies of such an effective means of restoring violated rights of citizens as cassation.

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