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Theoretical And Practical Problems of The Institution of Review of Judicial Decisions in Higher Instances in Civil Procedure

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Abstract. The institution of review of judicial decisions in higher instances occupies a central position in the architecture of civil procedure, serving simultaneously as a mechanism of error correction, an instrument of legal development, and a guarantor of procedural justice. This article examines the theoretical foundations and practical difficulties that characterize appellate, cassation, and supervisory review mechanisms across major legal traditions, with particular reference to post-Soviet civil procedure systems. Drawing on comparative procedural law scholarship, legislative texts, and judicial practice, the study identifies fundamental tensions between the principle of res judicata and the imperative of correctability, analyzes structural deficiencies in access to higher-instance review, and critically assesses the problem of inconsistent judicial interpretation as a systemic challenge to legal certainty. The article further examines the practical obstacles arising from excessive caseloads, the admissibility of new evidence at the appellate stage, and enforcement gaps that undermine the effectiveness of review decisions. Reform directions grounded in international standards and comparative experience are proposed as pathways toward a more coherent and effective system of judicial review in civil proceedings.

Keywords: appellate review, cassation procedure, civil procedure, higher instances, judicial review, res judicata, supervisory review, legal certainty, procedural justice, error correction

Introduction

The possibility of challenging a judicial decision before a superior court is one of the oldest and most fundamental features of organized legal systems. From the Roman institution of appellatio to the elaborate multi-tier review structures characteristic of contemporary civil procedure, the underlying premise has remained constant: that fallibility is an inherent attribute of first-instance adjudication, and that the legitimacy of judicial authority requires mechanisms capable of identifying and correcting errors of law and, in appropriate cases, of fact.

Yet the institution of review in higher instances is inherently paradoxical. On the one hand, the principle of res judicata demands that litigation possess an endpoint: without finality, judicial decisions would serve merely as provisional determinations susceptible to perpetual challenge, undermining the predictability upon which commercial and civil life depends [1]. On the other hand, an absolute commitment to finality, tolerating manifest errors of law and gross injustices as the unavoidable price of certainty, would sacrifice the substantive quality of justice upon which the legitimacy of judicial authority ultimately rests. The entire architecture of appellate, cassation, and supervisory review represents different attempts to negotiate this fundamental tension.

The intensity of these theoretical tensions is matched by the complexity of practical difficulties that afflict review institutions in contemporary legal systems. Overburdened dockets at supreme and appellate courts, inconsistent jurisprudential outputs generating legal uncertainty, contested criteria for the admissibility of new evidence on appeal, and structural barriers to access arising from financial,

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geographic, and informational asymmetries collectively undermine the effectiveness of review as a guarantee of justice [2], [3].

These challenges acquire particular salience in post-Soviet civil procedure systems, which have undergone extensive reform over the past three decades without achieving comprehensive and internally coherent review structures. The transplantation of European procedural models into institutional environments shaped by Soviet-era conceptions of judicial hierarchy, the ambiguous relationship between individual rights and state authority, and the persistent underfunding of judicial infrastructure has generated hybrid systems whose theoretical premises are often in tension with their operational realities.

This article proceeds in five parts. Part I examines the theoretical foundations of review in higher instances, including the principal theoretical models and the values they embody [4], [5]. Part II analyzes the typology of review mechanisms in comparative perspective. Part III identifies the major theoretical problems that affect the conceptual coherence of review institutions. Part IV examines the practical problems that impair operational effectiveness. Part V proposes reform directions drawn from comparative experience and international procedural standards. The article concludes with reflections on the broader implications for the legitimacy and effectiveness of civil justice.

Theoretical Foundations of Review in Higher Instances. The institution of review in higher instances rests on a set of foundational theoretical premises that shape its design and delimit its legitimate scope [6]. Three principal theoretical frameworks have influenced the development of review mechanisms in civil procedure: the error-correction model, the law-development model, and the procedural justice model.

Methodology

The error-correction model conceptualizes higher-instance review primarily as a mechanism for rectifying mistakes made at the first-instance level. Under this view, which dominated nineteenth-century procedural thinking in continental Europe, the appeal constitutes an extension of the original proceeding rather than a new action: the appellate court re-examines the case de novo, correcting factual and legal errors identified in the challenged decision. The procedural expression of this model is the full appeal (appel plein), in which the appellate court possesses jurisdiction to receive new evidence, hear additional witnesses, and render a decision on the merits.

The law-development model, by contrast, conceptualizes the primary function of the highest review instance as the authoritative interpretation of legal norms and the harmonization of judicial practice. Under this model, exemplified by the German Bundesgerichtshof and the French Cour de cassation in their respective traditions, the cassation court is not conceived as a third tier of factual adjudication but as a guardian of the unity and consistency of law. Access to cassation review is accordingly conditional upon demonstrating a question of legal significance beyond the immediate interests of the parties a requirement that simultaneously elevates the systemic function of the institution and restricts individual access.

The procedural justice model, developed in the scholarship of Cappelletti and Garth and elaborated by subsequent access-to-justice scholarship, emphasizes the review institution as an instrument for ensuring that the procedural rights of litigants are respected and that errors capable of producing fundamentally unjust outcomes are corrected regardless of their doctrinal categorization. This model is particularly attentive to the risk that doctrinal restrictions on review admissibility thresholds, grounds limitations, time constraints may systematically disadvantage economically weaker litigants, creating a de facto multi-speed justice in which the availability of meaningful review correlates with the resources of the appellant.

These three models are not mutually exclusive, and most contemporary civil procedure systems incorporate elements of all three. Nevertheless, the relative weight assigned to each model profoundly shapes the structural features of review institutions: the scope of the appellate court's jurisdiction, the admissibility of new evidence and arguments, the conditions for access, and the remedial powers of the reviewing court.

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Typology of Review Mechanisms in Comparative Perspective. The diversity of review mechanisms across major legal systems reflects the competing priorities of the theoretical frameworks identified above, mediated by historical tradition, constitutional structure, and the organizational logic of each legal order. Four principal models may be distinguished: the full appeal, the restricted appeal, cassation review, and supervisory (revision) review.

The full appeal, characteristic of common law jurisdictions and early civil law traditions, grants the appellate court authority to reconsider both factual findings and legal conclusions, admit new evidence under defined conditions, and decide the case afresh on the merits. The English Court of Appeal, operating under the Civil Procedure Rules 1998 and reformed by the Woolf reforms of 1999, exemplifies a contemporary hybrid: appellate review is in principle limited to review of the first-instance judgment rather than a complete re-hearing, but the court retains discretion to admit new evidence in exceptional circumstances and to substitute its own decision where the interests of justice require.

The restricted or limited appeal, developed primarily in German procedural law under the ZPO, subjects review to a leave requirement and restricts appellate jurisdiction to questions of law, treating the factual findings of the first-instance court as binding in the absence of procedural errors. The Berufung (first appeal) in German civil procedure permits limited factual review upon presentation of new evidence not previously available, while the Revision (second appeal) is confined to questions of law of general significance or where the appellate court has deviated from decisions of the Bundesgerichtshof.

The cassation model, inherited from the French revolutionary tradition and widely disseminated throughout continental European and post-Soviet legal systems, distinguishes sharply between the cassation court's function and that of ordinary appellate jurisdictions. The cassation court does not adjudicate the merits of the dispute; it examines whether the lower court correctly applied the law. Upon finding a violation of law, the cassation court traditionally quashes the challenged decision and remands the case for fresh adjudication, preserving the separation between fact-finding and law-application functions.

Post-Soviet civil procedure systems have generally inherited a tripartite structure consisting of first-instance courts, appellate courts, and cassation or supervisory instances, to which a further layer of supervisory review (nadzor) was historically added. The Soviet-era supervisory review mechanism under which judicial decisions could be challenged by supervisory order at any time after they became final represented a unique institutional feature with profound implications for the principle of legal certainty. While many post-Soviet states have formally restricted or abolished supervisory review in its most expansive form, elements of the institution persist in the civil procedure codes of Russia, Kazakhstan, Uzbekistan, and other successor states, creating tensions with European human rights standards as interpreted by the European Court of Human Rights.

Result and Discussion

Theoretical Problems of the Institution of Review. The tension between res judicata and the imperative of correctability constitutes the most fundamental theoretical problem in appellate procedure. The principle of res judicata serves values of legal certainty, procedural efficiency, and the psychological closure afforded to successful litigants who have obtained a final judgment. The UNIDROIT Principles of Transnational Civil Procedure recognize res judicata as a general principle applicable across legal traditions, acknowledging its function in preventing the relitigation of decided issues and protecting the finality of judicial dispositions.

Against this, the right to an effective remedy and to a fair trial, as guaranteed by Article 6 of the European Convention on Human Rights and analogous constitutional provisions in domestic systems, implies that procedural mechanisms must be available to correct decisions that are fundamentally unjust or legally erroneous [7]. The European Court of Human Rights has consistently held that restrictions on access to courts of appeal must pursue a legitimate aim and satisfy the proportionality requirement, and that undue restrictions may violate Article 6 even where the Convention does not

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guarantee access to any particular tier of review as an absolute right.

The theoretical resolution of this tension depends critically on how the system defines the permissible grounds for review. Systems that confine review to legal error while treating factual findings as binding accept a residual risk of factually erroneous decisions becoming final; systems that permit broad factual review at the appellate stage risk transforming every first-instance defeat into merely a preliminary round of a multi-stage proceeding in which the real decision emerges only after years of review proceedings [8], [9].

The Scope Problem. The definition of the scope of review generates substantial theoretical difficulty in all review systems. In cassation systems, the principle that the cassation court examines only questions of law is complicated by the difficulty of maintaining a clean conceptual distinction between questions of law and questions of fact. The characterization of facts under a legal norm for example, whether a particular course of conduct constitutes a breach of the duty of care involves evaluative judgments that resist clear categorization as purely factual or purely legal. Cassation courts across different jurisdictions have adopted divergent approaches to this boundary problem, producing inconsistency that itself undermines the uniformity of law that cassation review is designed to promote [10], [11].

In post-Soviet civil procedure, the scope problem is compounded by the legacy of inquisitorial procedural traditions under which the court bore substantial responsibility for establishing the facts of the case, blurring the boundary between the adjudicative and investigative functions of the judiciary. The transition toward more adversarial procedural models has proceeded unevenly, leaving reviewing courts uncertain about the extent to which they should defer to first-instance factual determinations or engage in independent fact assessment.

The Role of the Reviewing Court. A related theoretical problem concerns the conceptualization of the reviewing court's role as between a corrective and a preventive function [12]. Corrective review focuses on identifying and remedying errors in the specific case before the court; preventive review emphasizes the review court's function of generating authoritative interpretive precedents that reduce the frequency of legal error in future first-instance adjudication. The relative weight assigned to these functions affects decisions about the design of access criteria, the remedial powers of the reviewing court, and the degree to which review decisions are publicized and systematized as sources of law.

Practical Problems in the Exercise of Review Jurisdiction. The most pervasive practical problem affecting higher-instance courts across civil procedure systems is the accumulation of excessive caseloads that produce unreasonable delays in the determination of appeals and review applications. The European Court of Human Rights has adjudicated hundreds of cases under Article 6(1) of the Convention in which the unreasonable duration of civil proceedings at the appellate stage constituted a violation of the right to a fair trial within a reasonable time, confirming that delay at the review stage is not merely an organizational inconvenience but a fundamental procedural rights concern [13].

The causes of caseload pressure at higher-instance courts are structural and mutually reinforcing. Generous access to review particularly where no leave requirement limits the volume of appeals creates incentive structures that favor routine appeal as a litigation strategy, inflating dockets without proportionate increases in judicial capacity. The absence of effective costs sanctions for unmeritorious appeals reduces the financial disincentive to challenge adverse first-instance decisions. Inadequate filtering mechanisms at the admissibility stage allow substantively weak appeals to consume disproportionate judicial resources. In post-Soviet systems, the persistence of supervisory review alongside ordinary appellate and cassation review channels multiplies the entry points for challenge without corresponding increases in appellate court capacity, generating systemic delay that compromises the procedural rights of all litigants.

New Evidence and Arguments at the Appellate Stage. The question of whether, and under what conditions, new evidence and legal arguments may be introduced at the appellate stage represents one of the most practically contested issues in appellate procedure. Systems that categorically exclude new evidence promote efficiency and discourage strategic withholding of evidence at first instance, but risk

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perpetuating factually erroneous decisions where evidence was genuinely unavailable to the litigant during the initial proceedings. Systems that freely admit new evidence risk undermining the first-instance proceedings as the primary forum for evidentiary presentation, converting the appeal into a second trial and creating incentives for inadequate preparation at first instance.

Most contemporary civil procedure systems adopt intermediate positions that permit admission of new evidence subject to conditions: typically, that the evidence was not available at first instance despite the exercise of reasonable diligence, and that its admission is necessary in the interests of justice [14]. However, the application of these conditions in practice is notoriously inconsistent, generating uncertainty both for litigants and for lawyers advising on appellate strategy. In post-Soviet civil procedure, where judicial cultures shaped by inquisitorial traditions may incline reviewing courts toward greater receptiveness to new material, the disciplining function of evidence exclusion rules is frequently attenuated.

Inconsistent Jurisprudence and Legal Uncertainty. A paradox inherent in multi-tier review systems is that the institution designed to ensure the uniform application of law may itself generate inconsistency through divergent interpretive outputs from courts at the same hierarchical level. Where cassation or appellate courts operate in chambers without effective mechanisms for harmonizing their respective jurisprudence, conflicting decisions on the same legal question may coexist for extended periods, creating a state of legal uncertainty that is especially damaging in areas of commercial law where predictability of outcome is a precondition for transactional planning.

Barriers to Access. Meaningful access to higher-instance review is conditioned by financial, informational, and geographic factors that systematically disadvantage economically weaker litigants. Court fees for lodging appeals, the cost of legal representation at the appellate stage, and the geographic concentration of higher-instance courts in capital cities impose barriers that may effectively exclude categories of litigant from meaningful review. Legal aid schemes in post-Soviet civil procedure systems are typically underfunded and restricted in scope, leaving self-represented litigants without the informational resources needed to identify reviewable errors in first-instance decisions and to formulate legally adequate grounds of challenge.

The digital transformation of court processes offers potential remedies to some of these barriers: e-filing systems reduce geographic barriers, and online databases of appellate decisions reduce informational asymmetries. However, the digitalization of civil procedure has proceeded at uneven rates across post-Soviet states, and the assumption that digital access substitutes for physical access to justice overlooks the digital literacy gaps and infrastructural inequalities that affect significant portions of the population in Central Asian jurisdictions.

The Review Institution in Uzbekistan’s Civil Procedure. The Civil Procedure Code of Uzbekistan, adopted in 2018 and entering into force in 2019, restructured the review mechanisms applicable to civil cases within the framework of a comprehensive procedural reform undertaken as part of the broader judicial modernization program. The Code establishes a three-tier review structure: appellate review before regional courts (for decisions of district and city courts of first instance), cassation review before the Civil Chamber of the Supreme Court, and supervisory review (nadzor) before the Presidium of the Supreme Court.

The appellate stage under the 2018 Code is characterized by a restricted scope of review: the appellate court examines the legality and validity of the first-instance decision on the basis of the materials presented in the lower court, with new evidence admissible only upon demonstration that it was objectively unavailable during the original proceedings. This represents a meaningful departure from the expansive appellate practice characteristic of the Soviet era, in which appellate courts frequently conducted quasi-independent factual examination without strict limitation to the first-instance record.

Cassation review before the Supreme Court’s Civil Chamber is subject to a leave requirement introduced by the 2018 reform, designed to filter out unmeritorious applications and focus the cassation court's attention on questions of legal significance. In practice, however, the filtering

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mechanism has operated inconsistently, with criteria for the grant of cassation leave interpreted variably across chambers, generating the very uncertainty that systematic leave requirements are designed to reduce. The persistence of supervisory review at the Presidium level a mechanism whose compatibility with the finality principle and with Article 6 ECHR standards has been extensively criticized in comparative scholarship represents the most significant unresolved theoretical and practical problem in the current architecture.

Reform proposals circulated in Uzbek legal scholarly discourse have recommended the gradual phasing out of supervisory review in its current form, its replacement by a narrowly defined extraordinary review mechanism available only on grounds of fundamental procedural violations or changes in controlling law, and the introduction of a constitutional complaint procedure enabling challenges to judicial decisions that raise questions of constitutional rights. These proposals reflect the influence of the German Verfassungsbeschwerde model and the Council of Europe's standards on supervisory review as elaborated in Recommendation Rec(2004)16 of the Committee of Ministers.

Reform Directions and International Standards. The theoretical and practical problems identified in the preceding analysis point toward a set of reform directions that are broadly consistent across different legal traditions and are supported by international procedural standards. The UNIDROIT Principles of Transnational Civil Procedure articulate procedural principles of general significance: access to review should be available as a matter of right for questions of law and for serious procedural violations; review of factual determinations should be available at least on a limited basis; and review proceedings should be conducted within a reasonable time [15].

The Council of Europe's instruments provide additional normative guidance. Recommendation No. R(95)5 of the Committee of Ministers concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases emphasizes the importance of effective filtering mechanisms at the leave stage, the desirability of oral hearings in cases involving significant factual issues, and the need for reasoned decisions at all review levels.

At the level of structural reform, the literature identifies several priority areas. First, rationalization of the review structure through the reduction of overlapping review channels particularly the elimination or strict restriction of supervisory review would reduce systemic delay and enhance legal certainty without sacrificing meaningful access to review for litigants whose fundamental rights have been violated [16], [17]. Second, the introduction or strengthening of leave requirements at the cassation stage, combined with transparent and judicially developed criteria for the grant of leave, would enable supreme courts to concentrate their interpretive resources on cases of genuine legal significance, enhancing their law-development function. Third, investment in legal aid infrastructure and the development of pro bono networks at the appellate level would reduce access barriers affecting economically disadvantaged litigants, promoting the substantive rather than merely formal equality of treatment that procedural justice requires [18], [19].

A further reform priority is the systematic publication and indexation of higher-instance decisions. In many post-Soviet jurisdictions, including Uzbekistan, the accessible published record of appellate and cassation jurisprudence remains incomplete, limiting the extent to which decisions can function as de facto precedents capable of orienting first-instance judicial practice [20]. The development of comprehensive, searchable legal databases comparable to the ECLI (European Case Law Identifier) system in EU member states would represent a meaningful contribution to legal certainty without requiring any legislative amendment to formal procedural rules.

Conclusion. The institution of review of judicial decisions in higher instances occupies a position of enduring centrality in the architecture of civil procedure precisely because it mediates the most fundamental tensions inherent in organized adjudication: between error correction and finality, between individual justice and systemic coherence, between accessibility and efficiency. The theoretical models that have informed the design of review institutions error correction, law development, procedural justice each capture important values, and the challenge for procedural design is to construct institutions that give adequate weight to each without sacrificing the others.

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The practical difficulties that beset review institutions in contemporary legal systems caseload pressures, inconsistent jurisprudence, evidentiary disputes, and access barriers are in large measure consequences of the theoretical ambiguities that have not been resolved at the level of institutional design. Where the function of review is unclear, access criteria are uncertain; where the scope of review is contested, procedural conduct is unpredictable; where remedial powers are undefined, the effectiveness of review as a guarantee of justice is compromised.

For post-Soviet civil procedure systems, and for Uzbekistan's civil procedure in particular, the reform trajectory is broadly identifiable: rationalize the review structure, strengthen filtering mechanisms, invest in access infrastructure, and align supervisory review with international human rights standards. Implementing this agenda requires not only legislative reform but sustained attention to judicial culture, institutional capacity, and the conditions of trust in the judiciary that alone make formal procedural rights practically meaningful. The measure of a review institution is not the elegance of its theoretical foundations but the quality of justice it delivers to the litigants who appear before it.

REFERENCES

1. N. Andrews, Andrews on Civil Processes, vol. 1. Cambridge, U.K.: Intersentia, 2013.
2. M. Cappelletti, The Judicial Process in Comparative Perspective. Oxford, U.K.: Clarendon Press, 1989.
3. M. Cappelletti and B. Garth, Access to Justice: A World Survey. Alphen aan den Rijn, Netherlands: Sijthoff & Noordhoff, 1978.
4. Republic of Uzbekistan, Civil Procedure Code, No. ZRU-O'RQ-534, Apr. 22, 2018.
5. Council of Europe Committee of Ministers, Recommendation No. R(95)5 concerning the introduction and improvement of appeal systems in civil and commercial cases. Strasbourg, France, 1995.
6. Council of Europe Committee of Ministers, Recommendation Rec(2004)16 on supervisory review in civil and administrative matters. Strasbourg, France, 2004.
7. European Court of Human Rights, Delcourt v. Belgium, Application No. 2689/65, Series A, No. 11, 1970.
8. European Court of Human Rights, Brualla Gómez de la Torre v. Spain, Application No. 26737/95, ECHR Reports, 1997-VIII.
9. Hague Conference on Private International Law, Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The Hague, Netherlands: HCCH, 2019.
10. B. Hess and T. Pfeiffer, Eds., Interpretation of the Public Policy Exception in EU Private International Law. Brussels, Belgium: European Parliament, 2011.
11. J. A. Jolowicz, On Civil Procedure. Cambridge, U.K.: Cambridge University Press, 2000.
12. W. H. Rechberger and G. E. Kodek, Eds., Appeals in European Civil Procedure. Alphen aan den Rijn, Netherlands: Kluwer Law International, 2015.
13. R. Stürner, "The principles of transnational civil procedure: An introduction," Rabels Zeitschrift für ausländisches und internationales Privatrecht, vol. 58, pp. 533–589, 2011.
14. M. Taruffo, "The function of appeal in the European tradition," in Civil Justice between Efficiency and Quality, C. H. van Rhee and A. Uzelac, Eds. Cambridge, U.K.: Intersentia, 2013.
15. UNIDROIT, Principles of Transnational Civil Procedure. Cambridge, U.K.: Cambridge University Press, 2004.
16. A. Uzelac, Ed., Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems. Cham, Switzerland: Springer, 2014.
17. A. Uzelac and C. H. van Rhee, Eds., Transformation of Civil Justice: Unity and Diversity. Cham, Switzerland: Springer, 2017.
18. C. H. van Rhee, Ed., European Traditions in Civil Procedure. Cambridge, U.K.: Intersentia, 2007.
19. R. Verkerk, "Fact-finding as a core business of courts," in Evidence in Contemporary Civil

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http://journals.academiczone.net/index.php/jiphr

Procedure, C. H. van Rhee and A. Uzelac, Eds. Cambridge, U.K.: Intersentia, 2015.
20. A. Zuckerman, Zuckerman on Civil Procedure: Principles of Practice, 3rd ed. London, U.K.: Sweet & Maxwell, 2014.