

A Comprehensive Analysis of Appellate and Cassation Review in the Context of Vietnamese Criminal Procedure*

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Abstract

The nature of appellate review and cassation review in criminal procedure reflects a state's approach to organizing its criminal justice system. This article examines the complexities of these two procedural mechanisms within the context of Vietnamese criminal procedure, drawing on theoretical research and analyzing the provisions of the 2015 Criminal Procedure Code of Vietnam. Utilizing comparative and contrastive methodologies, the author outlines the fundamental distinctions between appellate review—as a direct re-examination of judgments that have not yet taken legal effect—and cassation review, which scrutinizes legally binding judgments to correct serious legal errors. Furthermore, the article conducts an in-depth legal analysis to identify normative shortcomings and procedural inadequacies in current regulations governing both appellate and cassation reviews. To address these issues, targeted solutions are proposed to refine the legal framework, thereby promoting a more effective and objective administration of justice. The comparative scope extends to international jurisdictions such as Poland, France, and Belgium, where cassation is primarily designed to identify and rectify errors in the application of law rather than re-evaluating factual matters. In these legal systems, cassation courts play a pivotal role in ensuring consistency, uniform interpretation, and coherent application of the law across all judicial levels.

Keywords: Legal Analysis; Judicial Inadequacies; Judgment Review; Vietnam's Criminal Procedure; Uniformity of Law

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A. INTRODUCTION

The International Covenant on Civil and Political Rights of December 16th, 1966, by the United Nations General Assembly stipulates in Clause 5 of Article 14 *“Anyone convicted of a crime shall have the right to have their conviction and sentence reviewed by a higher tribunal according to law.”* As a member state of this covenant, as contained in the United Nations Treaty Collection. (1982, September 24), Vietnam recognizes the principle *“The regime of first-instance and appellate trials is guaranteed”* in Clause 6, Article 103 of the 2013 Constitution of Vietnam, and this principle is further detailed in the 2015 Criminal Procedure Code of Vietnam. The content of this principle is the guiding ideology, with a general binding force, reflecting the state's perspective in organizing procedures to adjudicate criminal cases.

Under this principle, after a case is adjudicated at the first instance, the first-instance court's judgment or decision does not immediately take legal effect and may be appealed or protested. If there is no appeal or protest, the first-instance court's judgment or decision takes legal effect upon expiration of the appeal or protest period. Conversely, if there is an appeal or protest as prescribed by law, the content of the judgment or decision will be reviewed again at the appellate level, and the appellate court's ruling will have legal effect. The principle also mentions that if a judgment or decision of the court that has taken legal effect is found to have serious legal violations or new circumstances as prescribed by the Criminal Procedure Code, established by Law No. 101/2015/QH13, it will be reviewed under cassation or reopening procedures. Cassation and reopening procedures in Vietnam's criminal procedure are mechanisms for reviewing legally effective judgments or decisions, allowing higher courts to examine cases for serious legal violations. Reopening procedures enable the re-examination of cases under specific circumstances, ensuring justice and legal accuracy (Doan & Hong, 2021, p. 2). It can be seen that the regulation on the principle of ensuring the first-instance and appellate trial regime reflects the state's prudence in issuing judgments and decisions in the name of the state, contributing to the correct, objective, and timely resolution of criminal cases, ensuring the interests of the state, and the legitimate rights and interests of individuals, agencies, and organizations.

As the second and final level of adjudication, the nature of appellate review is stipulated in Clause 1, Article 330 of the 2015 Criminal Procedure Code as follows: *“Appellate review is the direct re-adjudication of a case or the review of a first-instance decision by a higher court when the first-instance judgment or decision on that case has not taken legal effect and is appealed or protested.”* Meanwhile, as a

procedure for reviewing judgments and decisions of the court that have taken legal effect, the nature of cassation review is defined in Article 370 of the 2015 Criminal Procedure Code, specifically: *"Cassation review is the review of a judgment or decision of the court that has taken legal effect but is protested due to the discovery of serious legal violations in the resolution of the case."* Due to the differences between appellate review and cassation review, the specific regulations of these two procedures in the Criminal Procedure Code also have significant differences. This article compares the differences between the nature of appellate review and cassation review in criminal procedure, analyzes the legal regulations of these two procedures, and proposes solutions to improve related legal provisions.

B. METHODS

Based on the attached article, the research methodology employed is a qualitative method using a normative-legal (doctrinal) approach. The study focuses on an in-depth analysis of legal norms, doctrines, and statutory regulations governing the criminal justice system in Vietnam. The literature review approach was conducted by examining various academic sources, theoretical research findings, and international legal literature. The author utilizes a comparative study, contrasting the judicial mechanisms in Vietnam with those of other jurisdictions such as Poland, France, and Belgium. Through this literature review, the study explores the foundational concepts and functions of cassation review in maintaining the uniformity of legal interpretation.

The statutory approach was applied through a comprehensive analysis of Vietnam's positive legal framework, specifically the 2013 Constitution of Vietnam and the 2015 Criminal Procedure Code of Vietnam (Law No. 101/2015/QH13). The author critically examines key provisions, such as Article 330 regarding the nature of appellate review and Article 370 concerning cassation review, alongside other articles regulating judicial authority and procedures. Through this combination of qualitative methods, literature study, and legal analysis of Vietnamese statutory regulations, the study successfully identifies various normative hurdles and procedural inadequacies within current criminal justice practices. The results of this qualitative analysis serve as the foundation for the author to formulate comprehensive, targeted legal reform proposals to enhance justice and legal certainty in Vietnam.

C. RESULTS AND DISCUSSION

1. Cassation in Select Jurisdictions Globally

Judiciaries Worldwide, a global resource on comparative judicial practices, defines cassation as "*cassation means quashing or annulling*" of a judicial decision (Federal Judicial Center, 2025). Cassation differs from an ordinary appeal in that, while an appeal involves requesting a higher court for review and possibly reversing a lower court's finding, cassation "*quashes a decision on a point of law.*" This distinction is crucial, as courts of cassation do not re-examine the facts of a case but rather focus on ensuring that legal principles were correctly applied. In many jurisdictions, cassation courts examine the legality of a final judgment issued by a court of appeals. Therefore, the scope of a court of cassation is to determine whether a court of appeal "*correctly applied the relevant legal provisions.*" A court of cassation ensures "*uniformity in the application of law and procedure*" (Federal Judicial Center). By doing so, courts of cassation reinforce legal consistency and judicial integrity.

The role and authority of courts of cassation vary significantly across jurisdictions, reflecting differences in legal traditions and judicial frameworks. While the fundamental purpose of cassation courts remains the review of legal interpretations, their specific functions are not uniform globally. In some countries, cassation courts strictly determine the legality of a lower court's ruling based on the letter of the law, without re-evaluating judicial reasoning. Other countries may also assess whether a decision was grounded in sound legal reasoning, thereby playing a more active role in shaping legal interpretation. Additionally, in certain jurisdictions, lower courts may seek advisory opinions from cassation courts on complex or unprecedented legal matters, further expanding their influence beyond mere judicial review (Federal Judicial Center, 2025). Judiciaries Worldwide has identified more than 20 countries that maintain specialized courts of cassation, underscoring the significance of this judicial mechanism in ensuring legal consistency. Countries with dedicated cassation courts include Armenia, Austria, Belgium, Egypt, France, Greece, Haiti, Iraq, Senegal, and Turkey. In contrast, some nations, such as Estonia, Indonesia, and Japan, integrate cassation review within their supreme courts, which also fulfill other judicial responsibilities. Meanwhile, in countries like the Netherlands, Poland, and Vietnam, the supreme courts primarily function as courts of cassation, reinforcing their role as the ultimate arbiters of legal interpretation and ensuring uniformity in the application of law within their respective legal systems (Federal Judicial Center, 2025).

The Court of Cassation (*Cour de Cassation*) serves as the highest judicial authority in France, playing a pivotal role in maintaining legal consistency and ensuring the correct application of the law. Its significance was cemented after the French Revolution, as the newly established government sought to prevent

the concentration of power within any single branch. According to the Federal Judicial Center, 2025 over time, *the Cour de Cassation* has evolved into one of the most well-known cassation courts, renowned for its role in shaping French jurisprudence. According to the European Law Institute (ELI) (2025), the primary function of the French Court of Cassation is to oversee the correct application of the law by lower courts in civil and criminal matters. It ensures uniformity in judicial interpretation, thereby upholding the principles of legal certainty and stability. As stated by ELI (2025), *"The Court reviews the legality of the contested decision and may annul it, but does not review the facts which form the basis of it."* This strict focus on legal interpretation rather than factual reconsideration differentiates cassation from traditional appellate review.

A notable feature of the French cassation system is its ability, since 1991, to issue advisory opinions on novel or complex legal questions when requested by lower courts. This advisory function strengthens judicial consistency by providing subordinate courts with authoritative guidance on intricate legal matters. As ELI (2025) further explains, *"Its role is to unify case law, ensure consistent legal reasoning across the country, and clarify the interpretation of legislation."* By centralizing the interpretation of legal principles, the *Cour de Cassation* reinforces predictability and coherence in the French legal system. The French approach to cassation has proven to be highly effective, particularly in ensuring uniformity in legal interpretation. The ability to issue advisory opinions distinguishes it from cassation courts in many other jurisdictions, as it allows the court to proactively shape legal doctrine rather than merely reacting to contested rulings. This system enhances legal clarity and minimizes discrepancies in judicial decisions across different regions of France.

Key differences are evident when the French cassation model is compared to the Vietnamese. While Vietnam's Supreme People's Court functions as a cassation court, its scope extends beyond mere legal review, often reassessing certain factual elements in extraordinary circumstances. Additionally, Vietnam lacks a formalized advisory mechanism akin to France's, which means subordinate courts may have less guidance when interpreting complex or evolving legal issues. Implementing a similar advisory function in Vietnam could strengthen legal consistency and support lower courts in resolving ambiguities more effectively. It can be deduced that the French approach to cassation is a robust mechanism that fosters judicial uniformity and legal predictability. Its ability to provide authoritative guidance to lower courts reinforces the integrity of the legal system, making it a model that other jurisdictions, including Vietnam, may benefit from adapting in some capacity.

The Supreme Court of the Netherlands, known as the *Hoge Raad*, serves as the highest judicial authority for civil, criminal, and tax law matters (Federal Judicial Center, 2025). As the country's court of cassation, it is primarily responsible for ensuring legal uniformity and the coherent development of Dutch law. Its jurisdiction extends to hearing appeals in cassation, focusing strictly on whether lower courts have applied the law correctly (De Respraak, 2025). As stated by the Hoge Raad, "*The court examines whether a lower court observed proper application of the law in its decision. At this stage, the facts of the case as established by the lower court are no longer subject to discussion*" (De Respraak, 2025). This principle underscores the fundamental role of cassation as a mechanism for legal oversight rather than factual reassessment. An important feature of the Dutch cassation system is its integration with the Attorney General's Office. The Procurator General of the Supreme Court plays a critical role by providing "*members of the Supreme Court with independent advice, known as an 'advisory opinion', on how to rule in the cassation proceedings before them*" (Hoge Raad der Nederlanden, 2025). This additional layer of legal scrutiny enhances the consistency of judicial decisions and ensures that legal interpretation remains aligned with broader legal principles.

According to Ross et al. (2022), unlike many cassation courts that focus solely on domestic rulings, the Hoge Raad also hears appeals in cassation from the Joint Court of Justice of *Aruba, Curaçao, Sint Maarten, and the Caribbean Netherlands (Bonaire, Sint Eustatius, and Saba)*. This expanded jurisdiction makes it a unique cassation authority that harmonizes legal interpretation across multiple legal systems within the Dutch Kingdom.

When compared to the French Court of Cassation, the Dutch approach to cassation exhibits both similarities and key distinctions. Both courts focus exclusively on the application of legal principles rather than reevaluating facts, reinforcing legal uniformity within their respective systems. However, unlike the French model, the Hoge Raad benefits from the formalized role of the Procurator General, whose advisory opinions add a safeguard to legal interpretation. The French *Cour de Cassation*, on the other hand, has the advantage of issuing proactive legal opinions when requested by lower courts, which strengthens legal clarity before disputes arise. In contrast to Vietnam's cassation system, the *Hoge Raad* operates with a more rigid focus on legal interpretation, with little room for reconsideration of factual elements. Vietnam's Supreme People's Court, while functioning as a cassation court, has broader discretionary powers in extraordinary cases.

Additionally, Vietnam lacks a structured advisory system akin to Hoge Raad's Procurator General, which may impact the consistency of cassation rulings. Implementing an independent advisory role in Vietnam could provide greater legal clarity and reinforce the integrity of the judicial review process. Overall, the Dutch model of cassation is a well-structured and effective system that prioritizes legal stability and coherence. Its reliance on an advisory mechanism and its ability to oversee legal uniformity across multiple jurisdictions make it a sophisticated approach to cassation that other legal systems, including Vietnam's, could draw valuable insights from.

Waga and Morgala (2024) aver that Polish civil procedure adheres to the principle of two-instance examination of cases, ensuring that a party in a trial has the fundamental right to have a judgment reviewed by a higher, separate court. This system is designed to enhance judicial oversight and fairness, reinforcing the integrity of the legal process. Apart from streamlining the appellant proceedings, the principle of instances influences the organization of courts, the status of judges, and the broader justice system in Poland. Cassation appeals are filed against rulings of second-instance courts, meaning they occur only after the regular appeals process has been exhausted. These appeals are brought before the Polish Supreme Court, the country's highest court of cassation. However, instead of having the Supreme Court review all civil cases indiscriminately, appellants must first demonstrate that their case meets a stringent threshold (Mierzejewski, 2021). Specifically, the appellant must prove that *"the appeal is important for the development of Polish law or precedent-setting for the resolution of other similar cases"* (Waga and Morgala, 2024). This requirement positions cassation as an *extraordinary* remedy, rather than a routine stage of appeal, reinforcing its role in shaping legal precedent rather than merely correcting lower-court errors. Additionally, the Supreme Court exercises discretion over which cases to admit, ensuring that only matters with significant legal implications are reviewed (Federal Judicial Center, 2025).

Poland and Vietnam have distinct cassation systems that reflect their respective legal traditions and judicial priorities. In Poland, cassation appeals are filed against rulings of second-instance courts and reviewed by the Supreme Court, which acts as the highest cassation authority. However, not all cases are eligible for cassation. Additionally, the Polish Supreme Court has discretion in admitting cases, ensuring its role remains focused on clarifying and unifying legal interpretations rather than re-examining individual disputes. Vietnam's cassation system, by contrast, is more expansive. While it also aims to ensure consistency in legal application, the Supreme People's Court of Vietnam has broader discretion in determining which cases to review. Unlike in Poland,

where cassation focuses on shaping legal precedent, Vietnam's cassation mechanism often serves as a corrective measure, addressing legal misapplications, procedural violations, and factual errors. This more flexible approach allows for greater judicial intervention but may also lead to inconsistencies in case selection and legal interpretation. Poland's cassation system is tightly controlled to maintain legal stability, and Vietnam's approach, as much as it provides more opportunities for review, risks undermining uniformity in judicial decision-making.

Belgium's *Cour de Cassation* is a specialized cassation court that does not function as a third-instance court of appeal. According to the *Cour de Cassation* website, Article 147 of the Belgian Constitution establishes a single Court of Cassation for the entire country, reinforcing its central role in overseeing judicial consistency. However, unlike appellate courts, it does not reassess case facts; instead, it reviews whether the lower courts correctly applied the law. Article 608 of the Belgian Judicial Code states that the Court of Cassation intervenes when a ruling contains legal violations or breaches procedural rules deemed "*substantial or prescribed under penalty of nullity*." This means the court strictly evaluates whether the challenged ruling is legally sound rather than revisiting factual determinations.

A notable feature of Belgium's cassation system is its precise role in ensuring legal uniformity and procedural fairness. The Court of Cassation scrutinizes lower-court rulings by asking fundamental legal questions: "*Is it adequately motivated? Does it comply with the law? Does it apply and interpret the rule of law correctly? Does it respect the reach of an act submitted to the judge?*" According to the Cour De Cassation website, Article 147 of the Belgian Constitution states, "*There is one Court of Cassation for the whole Belgian territory*." Even though it is placed at the top of the Belgian judiciary, the court is not "*a third-degree jurisdiction and does not judge disputes a third time*" (Cour de Cassation, 2025). According to Cour de Cassation (2025), Article 608 of the Belgian judicial code stipulates that the Court of Cassation will try cases in which, during the last trial, there was a contravention of the law "or due to the violation of forms which are either substantial or prescribed under penalty of nullity. While the first and second degrees of jurisdiction apply the law to the facts that shall be presented to them by the parties, the Court of Cassation judges the attacked ruling made in last resort: is it adequately motivated? Does it comply with the law? Does it correctly apply and interpret the rule of law? Does it respect the reach of an act submitted to the judge?" (Cour de cassation, 2025). This approach places Belgium's system closer to Poland's, emphasizing legal interpretation over case-specific concerns.

Vietnam's cassation system differs significantly from Belgium's in scope and function. While Belgium's *Cour de Cassation* focuses strictly on the application aspect of the law, Vietnam's Supreme People's Court has broader powers to overturn final judgments based on legal errors, procedural mistakes, or even newly discovered evidence. This distinction highlights a fundamental difference in judicial philosophy: Belgium, like Poland, restricts cassation to questions of law, whereas Vietnam allows for a more interventionist approach. While this flexibility can help correct judicial errors, it may also lead to uncertainty in the finality of court decisions. By contrast, Belgium's restrictive cassation framework ensures legal certainty and consistency, reinforcing the principle that cassation serves as a guardian of law rather than a mechanism for routine appeals.

2. Comparing the Nature of Appellate Review and Cassation Review in Vietnam's Criminal Procedure

In Vietnam, Cassation review is not an additional level of adjudication but a specialized procedure for re-examining court judgments and decisions that have already taken legal effect, provided there are grounds stipulated by the criminal procedure law. Unlike appellate review, which involves a higher court reassessing legal and factual aspects of a case, cassation review is strictly concerned with ensuring the correct application of the law (Nguyen, 2018). Given these fundamental differences, a comparative analysis of appellate and cassation reviews, both in theory and legal regulations, is essential to enhance the understanding of their distinct roles within the judicial system.

Regarding the tasks of appellate review and cassation review

The task of appellate review

Both appellate and cassation reviews play a crucial role in ensuring the uniform application of the law while safeguarding the interests of the state and the legitimate rights of agencies, organizations, and individuals. However, according to Part 5 of the Criminal Procedure Code of Vietnam (2015, amended and supplemented in 2021), an appellate review in criminal cases is initiated in response to appeals or protests against first-instance judgments or decisions that have not yet taken legal effect. Its primary purpose is to rectify errors or shortcomings made by the first-instance court by reassessing the case on its merits. Through this process, the appellate court not only reviews the factual and

legal basis of the original judgment but also ensures that the decision aligns with principles of justice and procedural fairness before it becomes legally binding. Specifically, the following passages show the basic process and components of the appellate review (Baetens, 2017).

Regarding the re-adjudication of the case on the merits

The appellate court has the task of re-examining and evaluating the facts of the case based on all collected evidence, including old and newly supplemented evidence. The re-adjudication on the merits can be conducted for the entire case or part of the case, depending on the content of the appeal or protest. When necessary, the appellate court may re-adjudicate parts of the case outside the scope of the appeal or protest.

Regarding checking the legality and basis of the first-instance judgment or decision

The appellate court reviews and ensures that the first-instance judgment or decision complies with both substantive and procedural law, and that the legal norms cited are correctly interpreted and applied. The basis of the judgment or decision is reflected in the conclusions, which must correspond to the objective facts of the case based on evidence collected, checked, and evaluated in accordance with criminal procedure law.

The task of cassation review

According to Mai (2021, p.66) Cassation review is a specialized form of judicial oversight aimed at identifying and nullifying court judgments or decisions that have taken legal effect if they are found to be unlawful. Unlike first-instance and appellate courts, which examine the merits of a legal case, a cassation court does not reassess evidence, reevaluate facts, or issue new determinations on the substance of a criminal matter. Instead, its primary function is to scrutinize the legal reasoning and application of the law, both substantive and procedural, by lower courts as stipulated in Part 7 of the 2015 Criminal Procedure Code (amended and supplemented in 2021). Through this process, cassation review ensures consistency in legal interpretation and safeguards the uniform application of the law across the judiciary.

Regarding the basis for initiating appellate review and cassation review procedures

The basis for initiating appellate review

According to the Criminal Procedure Code of Vietnam (2015), Article 331 (Right to Appeal), and Article 336 (Protests by the Procuracy) an Appellate review in criminal procedure is not an automatic level of adjudication that must be conducted after the first trial. This procedure only arises when an appeal or protest by authorized entities as prescribed by law. In other words, an appeal or protest is the basis for initiating an appellate review in criminal procedure. Only when a participant in the procedure appeals for their rights and interests or for the rights and interests of the party they defend/represent, or when the procuracy protests in the interest of the state or the community, can the competent court conduct an appellate review.

The basis for initiating a cassation review

The Criminal Procedure Code of Vietnam (2015), Article 373 states that the legal basis for initiating a cassation review is a cassation protest by an authorized entity. Compared to the basis for initiating appellate review (including appeals and protests against first-instance judgments or decisions), the basis for initiating cassation review only includes protests against judgments or decisions of the court that have taken legal effect, as there is no appeal procedure after the judgment or decision has taken legal effect. Once the judgment or decision has taken legal effect, the procedural status of the participants terminates, meaning they no longer have procedural rights and obligations, and thus cannot appeal against judgments or decisions that have taken legal effect.

Regarding the objects of appellate review and cassation review

The object of appellate review

Clause 1, Article 330 of the 2015 Criminal Procedure Code (amended and supplemented in 2021) stipulates the nature of appellate review as follows: “Appellate review is the direct re-adjudication of a case or the review of a first-instance decision by a higher court when the first-instance judgment or decision on that case has not taken legal effect and is appealed or protested.” Accordingly, first-instance judgments or decisions that have not taken legal effect and are appealed by authorized entities or protested by the competent procuracy will be the object of appellate review.

Additionally, in the case of an out-of-time appeal under Article 335 of the Criminal Procedure Code, if the appeal is made after the appeal or protest period has expired and the appeal is accepted, the appellate review procedure will be

conducted with the object being the part of the first-instance judgment or decision that has taken legal effect and is subject to the out-of-time appeal. Moreover, first-instance judgments or decisions that are not appealed or protested can also be the object of appellate review, as stipulated in Article 345 of the Criminal Procedure Code regarding the scope of appellate review: *“The appellate court shall review the part of the judgment or decision that is appealed or protested. It may review other parts of the judgment or decision that are not appealed or protested.”* This means that parts of the first-instance judgment or decision that are not appealed or protested will take legal effect after the appeal or protest period expires. When necessary, the appellate court may review the content of these judgments or decisions. Thus, it can be seen that the object of appellate review in criminal procedure includes both first-instance judgments or decisions (which have not taken legal effect or have taken legal effect) that are appealed or protested, as well as parts of first-instance judgments or decisions that have taken legal effect and are not appealed or protested.

The object of cassation review

The object of cassation review in criminal procedure is judgments or decisions of the court that have taken legal effect and are protested under cassation review, including first-instance judgments or decisions that have taken legal effect due to not being appealed or protested under appellate procedure; appellate judgments or decisions; cassation or reopening decisions of the high people's court and the central military court. Judgments or decisions that have not taken legal effect or have taken legal effect but are not protested under cassation review are not the object of this special procedure. This is considered a fundamental and distinguishing feature that sets a cassation review apart from an appellate review.

Article 28 of the 2015 Criminal Procedure Code stipulates *“Ensuring the effectiveness of judgments and decisions of the court.”* Accordingly,

Judgments and decisions of the court that have taken legal effect must be respected by agencies, organizations, and individuals. Relevant agencies, organizations, and individuals must strictly adhere to this requirement. Within the scope of their tasks, powers, and obligations, agencies, organizations, and individuals have the responsibility to coordinate, create conditions, and fulfill the requirements of agencies, organizations, and individuals responsible for executing judgments and decisions of the court.

However, in practice, not all judgments or decisions of the court that have taken legal effect and are enforced are lawful and error-free. Therefore, to prevent

such judgments or decisions from becoming precedents, ensure the uniformity of the law, and ensure the accuracy of court judgments and decisions, Vietnam's criminal procedure law stipulates that judgments and decisions of the court that have taken legal effect, if found to have serious legal violations in the resolution of the case and are protested by authorized entities, will be reviewed under cassation review. Thus, it can be seen that the object of the cassation review has determined the basic nature of the cassation review, which is not a higher level of adjudication than an appellate review but the review of judgments or decisions of the court that have taken legal effect.

Regarding the procedures of appellate review and cassation review

The procedure of appellate review

The 2015 Criminal Procedure Code stipulates two types of appellate review procedures corresponding to two kinds of objects that are appealed or protested: *“re-adjudication of the case or review of the first-instance decision”* (Nguyen, 2021). According to the Criminal Procedure Code of Vietnam (2015), Clause 1 of Article 362, if the object of the appeal or protest is a first-instance judgment, the appellate court conducts the procedure of re-adjudicating the case. If the object of the appeal or protest is only a first-instance decision, the appellate court does not hold a trial; instead, it organizes a meeting. However, based on the content of the regulations on the meeting to review the appealed or protested first-instance decision, it can be seen that this procedure is not much different from the trial procedure, as it requires the court to summon the appellant, the defense counsel, the representative of the party's rights and interests, and the person with related rights and obligations to the meeting, not only when deemed necessary. This helps the adjudicating panel at the meeting to fully receive the opinions of these parties, in addition to reviewing and evaluating the case documents and evidence to rule on the legality of the appealed or protested first-instance decision. Thus, it can be seen that whether organizing a re-trial or reviewing the appealed or protested first-instance decision, the appellate procedure also ensures the principles of publicity and adversarial proceedings in criminal adjudication.

The procedure of cassation review

Due to the nature of the cassation review, which involves reviewing judgments or decisions of the court that have taken legal effect, rather than a trial activity, the cassation review procedure is regulated differently from the appellate review procedure. Based on the case file, the cassation court checks and

reviews the legality of the judgment or decision that has taken legal effect and is protested, without the need to hold a public trial like the first instance or appellate trial to determine the facts of the case. The court also does not summon the convicted person, the defense counsel, and the persons with related rights and obligations to participate in the cassation trial unless it is deemed necessary or there are grounds to amend part of the judgment or decision that has taken legal effect (Criminal Procedure Code of Vietnam (2015), Clause 2 of Article 383). The law does not define “*cases deemed necessary*” or specific cases where the above parties must be summoned. Therefore, this is a discretionary provision, entirely dependent on the will of the competent court of cassation. And because it is a review activity, the principles to be followed in adjudication, such as direct trial or the right of everyone to attend (except for those under 16 years old), do not apply to the cassation review procedure.

Regarding the authority of the appellate adjudicating panel and the cassation adjudicating panel

The authority of the appellate adjudicating panel

According to the Criminal Procedure Code of Vietnam (2015), Clause 2 of Article 254, the appellate adjudicating panel consists of three judges established by the competent court to directly re-adjudicate the case or review the first-instance decision of the lower court that is appealed or protested, in the name of the state. Through this, it aims to correct errors and shortcomings of the first-instance court in issuing judgments or decisions. With this task, the 2015 Criminal Procedure Code stipulates the authority of the appellate adjudicating panel over first-instance judgments in Article 355, specifically including the rights:

- a) Not to accept the appeal or protest and to uphold the first-instance judgment;*
- b) To amend the first-instance judgment; c) To annul the first-instance judgment and transfer the case file for re-investigation or re-adjudication; d) To annul the first-instance judgment and terminate the case. đ) To terminate the appellate review.*

For first-instance decisions, at the meeting after reviewing the opinions and evidence related to the first-instance decision, the appellate adjudicating panel has the rights stipulated in Article 366 of the Criminal Procedure Code:

- a) Not to accept the appeal or protest and to uphold the first-instance court’s decision if it is found to be well-founded and lawful; b) To amend the first-instance*

court's decision; c) To annul the first-instance court's decision and transfer the case file to the first-instance court for further resolution.

It can be seen that the above rights of the appellate adjudicating panel over first-instance judgments and decisions have contributed to ensuring the objectivity, accuracy, and legality of the court's rulings and decisions. In cases where the adjudicating panel, after re-adjudicating the case or reviewing the first-instance decision, finds that the appeal or protest is unfounded and the first-instance court has adjudicated and concluded correctly, it will decide to uphold the first-instance judgment or decision. Conversely, suppose it finds that the first-instance court resolved the case unlawfully, depending on the grounds prescribed by law. In that case, the appellate adjudicating panel will decide to amend or annul the first-instance judgment or decision.

The authority of the cassation adjudicating panel

The Criminal Procedure Code of Vietnam (2015), Clause 2 of Article 382 stipulates that the cassation adjudicating panel consists of judges established by the competent court as prescribed by law to review judgments or decisions of the court that have taken legal effect and are protested due to the discovery of serious legal violations in the resolution of the case.

According to Article 388 of the 2015 Criminal Procedure Code, the authority of the cassation adjudicating panel includes the rights:

Not to accept the protest and to uphold the judgment or decision that has taken legal effect and is protested; To annul the judgment or decision that has taken legal effect and to enforce the lawful judgment or decision of the first-instance or appellate court that was annulled or amended unlawfully; To annul the judgment or decision that has taken legal effect for re-investigation or re-adjudication; To annul the judgment or decision that has taken legal effect and to terminate the case; To amend the judgment or decision that has taken legal effect; To terminate the cassation review.

The cassation adjudicating panel must review the entire case, not limited to the content of the protest, by re-checking the legality of the judgment or decision that has taken legal effect. The cassation adjudicating panel decides not to accept the protest and upholds the judgment or decision that has taken legal effect and is protested, meaning the judgment or decision that has taken legal effect has no significant legal violations. If serious legal violations are found in the resolution of the case, depending on the case and the legal grounds, the

cassation adjudicating panel has the right to annul or amend the judgment or decision that has taken legal effect, etc., to ensure the lawful adjudication activities of the court and the correct and uniform interpretation and application of the law.

3. Some Inadequacies and Proposed Solutions to Improve Legal Regulations Related to the Nature of Appellate Review and Cassation Review

Based on the analysis and comparison of the characteristic features of appellate review and cassation review in terms of theory and legal regulations, the author identifies some inadequacies in the rules governing these two procedures that need to be evaluated and improved. Specifically:

Regarding the Scope of Appellate Review and the Authority of the Appellate Adjudicating Panel to Amend First-Instance Judgments That Are Not Appealed or Protested

Article 345 of the 2015 Criminal Procedure Code stipulates: *“The appellate court shall review the contents of the judgment or decision that has been appealed or protested. It may review other parts of the judgment or decision that have not been appealed or protested.”* Along with this provision, the Criminal Procedure Code allows the appellate trial panel to amend the first-instance judgment for defendants who have not appealed or against whom no appeal or protest has been filed, under Clause 3 of Article 357. The authors argue that the content of these two provisions is inconsistent with the nature of appellate review. This is because the nature of appellate review *“is the direct re-examination of the case or the review of the first-instance decision by a higher court, where the first-instance judgment or decision regarding the case has not yet taken legal effect due to an appeal or protest.”* Appellate review cannot proceed without an appeal or protest filed in accordance with the appellate procedure. This is because according to the Criminal Procedure Code of Vietnam (2015), Clause 2 of Article 383 for parts of the first-instance judgment or decision of the court that have not been appealed or protested, their legal effect will arise from the date the appeal or protest period expires, and they must be respected and strictly complied with by individuals, agencies, and organizations. In cases where the appellate court discovers that the first-instance court has made serious errors or violated the law in issuing a judgment or decision that has already taken legal effect and was not appealed or protested, the trial panel should only recommend a protest under the cassation or reopening procedures to be reconsidered following the provisions of the

criminal procedure law rather than re-examining the content and amending the judgment.

Thus, we propose amending Article 345 of the Criminal Procedure Code to limit the scope of appellate review in line with the nature of appellate proceedings, focusing only on the parts of the judgment or decision that have been appealed or protested without reviewing the parts that have not been appealed or protested. Accordingly, the content of Article 345 of the Criminal Procedure Code after the amendment should read: *“The appellate court shall review the contents of the judgment or decision that has been appealed or protested.”* Additionally, we recommend abolishing the authority of the appellate trial panel to amend the first-instance judgment for defendants who have not appealed or against whom no appeal or protest has been filed and whose judgments have already taken legal effect, as provided in Clause 3 of Article 357 of the Criminal Procedure Code.

Regarding the Authority of the Appellate Trial Panel to Amend First-Instance Judgments That Have Been Appealed or Protested to the Detriment of the Defendant

In cases where the appellate trial panel amends the first-instance judgment in favor of the defendant under Clause 1 of Article 357 of the 2015 Criminal Procedure Code, it is not bound by the scope and direction of the appeal or protest against the first-instance judgment. This means that during the appellate trial, the panel only needs sufficient evidence to amend the judgment in favor of the defendant, regardless of whether the appeal or protest against the first-instance judgment is favorable or unfavorable to the defendant. However, if the first-instance judgment is amended to the detriment of the defendant, the appellate trial panel is bound by the scope of the subjects who have filed the appeal or protest and the direction of their appeal or protest. Specifically, Clause 2 of Article 357 of the 2015 Criminal Procedure Code stipulates:

In cases where the Procuracy has protested, or the victim has appealed, the appellate trial panel may: a) Increase the penalty, apply a more severe provision of the Criminal Code, apply additional penalties, or apply judicial measures; b) Increase the amount of compensation; c) Convert to a more severe type of penalty; d) Deny the defendant the benefit of a suspended sentence.

Thus, the appellate trial panel cannot amend the first-instance judgment to the detriment of the defendant, even if during the appellate trial, it has thoroughly examined the case and has sufficient evidence to amend the

judgment in this unfavorable direction, unless there was a prior appeal from the victim or a protest from the Procuracy requesting such an unfavorable amendment. It can be seen that the content of this provision aims to protect the legitimate rights and interests of defendants who have not been unfavorably appealed or protested against. Through an analysis of the legal provisions, we believe that Clause 2 of Article 357 of the 2015 Criminal Procedure Code has certain limitations that warrant further study and improvement. Specifically:

Clause 2 of Article 357 of the 2015 Criminal Procedure Code identifies the victim as the only subject with the right to appeal to the defendant's detriment. However, according to Article 331 of the Criminal Procedure Code, in addition to the victim, there are many other participants in the proceedings who have the right to appeal, such as

Civil plaintiffs; Civil defendants; Persons with related rights and obligations in the criminal case; Representatives of the victim; Representatives of the parties; Persons protecting the legitimate rights and interests of victims or parties who are under 18 years old or have mental or physical disabilities, who have the right to appeal parts of the judgment or decision related to the rights and obligations of the persons they represent.

The issue arises if these subjects file an appeal to the detriment of the defendant (for example, a lawyer representing a victim under 18 years old appeals to request an increase in the penalty or compensation amount; or a civil plaintiff appeals to request an increase in the compensation amount) but the Procuracy does not protest, and the victim does not appeal in this unfavorable direction; the trial panel cannot amend the judgment to the detriment of the defendant, even if there is sufficient evidence during the appellate trial.

The nature of appellate review is “the re-examination of the case or the review of the first-instance decision where the first-instance judgment or decision regarding the case has not yet taken legal effect due to an appeal or protest,” but in this case, the appellate trial panel, despite having sufficient evidence to prove the case to the detriment of the defendant, cannot amend the judgment in this unfavorable direction and can only annul the judgment for a retrial at the first-instance level. This does not ensure fairness in the proceedings for all parties who have filed an appeal, to the detriment of the defendant, increases litigation costs, and unnecessarily prolongs the resolution of the case.

To address this limitation, we propose amending Clause 2 of Article 357 of the 2015 Criminal Procedure Code as follows:

*In cases where the Procuracy has protested or **the appellant has requested**, the appellate trial panel may: a) Increase the penalty, apply a more severe provision of the Criminal Code, apply additional penalties, or apply judicial measures; b) Increase the amount of compensation; c) Convert to a more severe type of penalty; d) Deny the defendant the benefit of a suspended sentence.*

Expanding the authority of the appellate trial panel to amend the first-instance judgment to the detriment of the defendant when there is an unfavorable appeal from any subject with the right to appeal, rather than being limited to the victim's appeal, is necessary to ensure the legitimate rights and interests of all subjects with the right to file an unfavorable appeal against the defendant, as recognized by law, such as civil plaintiffs, representatives of the victim, persons protecting the legitimate rights and interests of victims under 18 years old, etc. From an economic perspective, this amendment saves litigation costs for the state and society while ensuring that the court's judgments and decisions remain correct, objective, and timely.

Regarding the Authority of the Cassation Trial Panel to Amend Judgments or Decisions That Have Taken Legal Effect

The Criminal Procedure Code of Vietnam (2015), Article 393 stipulates that the cassation trial panel may amend judgments or decisions that have taken legal effect, provided that the documents and evidence in the case file are transparent and sufficient. The amendment does not change the nature of the case, worsen the situation of the convicted person, or adversely affect the victim or the parties. This authority of the cassation trial panel is not newly recognized in the current Criminal Procedure Code but was already provided for in the 1988 Criminal Procedure Code of Vietnam. However, it was abolished in the 2003 Criminal Procedure Code.

Some argue that the current Criminal Procedure Code's recognition of the cassation trial panel's authority to amend judgments or decisions that have taken legal effect

is necessary to ensure the prompt and effective resolution of the consequences caused by judgments or decisions that seriously violate the law and are protested, without unnecessarily prolonging the time and costs, while not affecting the legitimate rights and interests of the convicted person and other participants in the proceedings (Tran, 2021).

Conversely, some authors argue that:

The provision allowing the cassation trial panel to amend judgments or decisions of the court that have taken legal effect is unreasonable because cassation is not a trial level. The subject of cassation is judgments or decisions of the court that have taken legal effect. When a protest occurs, the cassation trial panel will review and assess whether these judgments or decisions violate the law and to what extent, to determine the appropriate resolution. Therefore, upon discovery, it should request reinvestigation, prosecution, or retrial, which is more in line with current practical requirements (Tran, 2023).

We believe that the provision on the authority to amend judgments or decisions of the court that have taken legal effect is not entirely consistent with the nature of cassation, as cassation is not at the trial level. By providing this authority, the law allows the cassation trial panel not only to review the legality of court judgments or decisions that have taken legal effect, but also to directly adjudicate the case's content, making cassation resemble a third level of trial above the appellate level.

Moreover, the subject of review under the cassation procedure is judgments or decisions issued in the state's name by the court that have taken legal effect. In cases where the cassation trial panel has the authority to amend the court's judgments or decisions that have taken legal effect, it goes against the principles of the Criminal Procedure Code regarding “*Ensuring the effectiveness of court judgments and decisions*” as stipulated in Article 28 of the 2015 Criminal Procedure Code of Vietnam and contradicts the principle “*No one shall be tried twice for the same offense*”, as judgments or decisions of the court that have taken legal effect must be respected and strictly complied with by agencies, organizations, and individuals, and the court is not allowed to adjudicate a person or legal entity whose actions have already been subject to a court judgment that has taken legal effect. However, we also agree that not every error in the process of resolving a case necessarily requires the annulment of the judgment for reinvestigation or retrial. In practice, there have been cases in Vietnam where the cassation trial panel amended the court's judgments or decisions that had taken legal effect due to errors in identifying the defendant's personal information such as the Supreme People's Court of Vietnam, (2023 Cassation Decision No. 09/2023/HS-GDT dated September 14th or violations related to the handling of evidence in the case as in the High People's Court in Da Nang, 2024, Cassation Decision No. 07/2024/HS-GDT dated May 9th.

Amending the court's judgments or decisions in terms of form (without considering the nature or content of the case) in such cases is reasonable, saves litigation costs and time, and does not change the nature of the case or worsen

the situation of the convicted person, nor adversely affect the victim or the parties. Given the shortcomings above, the authors recommend that the Criminal Procedure Code continue to recognize the authority of the cassation trial panel to amend judgments or decisions that have taken legal effect under Clause 5 of Article 388 of the 2015 Criminal Procedure Code.

However, Article 393 of the 2015 Criminal Procedure Code should limit the scope of the cassation trial panel's authority to amend the court's judgments or decisions that have taken legal effect. Specifically, the cassation trial panel should not have the authority to amend the charges or penalties in the court's judgments or decisions that have taken legal effect. Suppose there are legal violations leading to the incorrect application of charges or penalties that do not correspond to the defendant's actions or personal circumstances. In that case, the judgment or decision that has taken legal effect should be annulled for reinvestigation or retrial. We believe that the cassation trial panel should only amend the court's judgments or decisions in cases of formal errors, such as incorrect identification of the personal information of the participants in the proceedings, incorrect aggregation of penalties or compensation amounts, or violations related to the handling of evidence.

Based on the above analysis, we propose amending Article 393 of the 2015 Criminal Procedure Code as follows:

Article 393. Amending Judgments or Decisions That Have Taken Legal Effect

The cassation trial panel may amend judgments or decisions that have taken legal effect when the following conditions are met:

1. The documents and evidence in the case file are clear and sufficient;
2. The amendment of the judgment or decision does not change the nature of the case, worsen the situation of the convicted person, or adversely affect the victim or the parties, as follows:
 - a. Amending the decision on the handling of evidence, the decision on the aggregation of penalties, or the aggregation of compensation amounts.*
 - b. Amending the contents related to the participant's personal information in the case proceedings.*

We believe that specifying the cases in which the cassation trial panel is authorized to amend the court's judgments or decisions that have taken legal effect as above will save and reduce litigation costs and time, while also being consistent with the nature of cassation, which does not review or intervene in the

content of the case, thereby contributing to ensuring the basic principles of criminal procedure law and protecting the legitimate rights and interests of the participants in the proceedings.

D. CONCLUSION

The nature of appellate review and cassation is closely related to other provisions of the Criminal Procedure Code regarding appellate review and cassation. The provisions on the nature of appellate review in Article 330 and the nature of cassation in Article 370 of the Criminal Procedure Code reflect the perspective of Vietnamese procedural law on the nature of the final trial level and the nature of the procedure for reviewing court judgments or decisions that have taken legal effect and are protested due to serious violations of the law in resolving the case. However, the specific provisions of these two procedures still have certain shortcomings that need to be further studied and improved to align with the nature of appellate review and cassation. In this context, we hope that this article will serve as a valuable reference for the process of building and improving the law on court proceedings, contributing to the successful implementation of the tasks and solutions for judicial reform in Vietnam in the new phase as outlined in Resolution No. 27-NQ/TW dated November 9th, 2022, of the 6th Plenum of the 13th Central Committee of the Communist Party of Vietnam: *“Building a democratic, fair, humane, comprehensive, timely, consistent, unified, transparent, feasible, accessible legal system capable of regulating social relations, placing the legitimate and rightful interests of the people, organizations, and enterprises at the center, and promoting innovation and creativity.”*

REFERENCES

- Baetens, F. (2017). Judicial review of international adjudicatory decisions: a cross-regime comparison of annulment and appellate mechanisms. *Journal of International Dispute Settlement*, 8(3), 432-459.
- Constitution of the Socialist Republic of Vietnam. (2013).
- Cour de Cassation. (2025, March 1). About the Court: Cour de Cassation. Retrieved from <https://hofvancassatie.be/en/>
- Criminal Procedure Code of Vietnam. (2003).
- Criminal Procedure Code of Vietnam. (2015, amended and supplemented in 2021).

- de Rechtspraak. (2025, February 28). Supreme Court: Judicial system Netherlands. Retrieved from <https://www.rechtspraak.nl/English/Judicial-system-and-legislation/Pages/Supreme-Court.aspx>
- Doan, L. D., & Hong Nguyen, T. T. (2021). Sustaining Vietnamese economic development by improving the transparency of choice of law decisions. *Akron Law Review*, 54(5), 2.
- European Law Institute. (2025, February 26). Court of Cassation in France (Cour de Cassation). *European Law Institute Secretariat*. Retrieved from <https://www.europeanlawinstitute.eu/membership/institutional-members/court-of-cassation-of-france/>
- Federal Judicial Centre. (2025, February 27). What is Cassation? *Judiciaries Worldwide: A Resource on Comparative Judicial Practice*. Retrieved from <https://judiciariesworldwide.fjc.gov/question/what-cassation>
- High People's Court in Da Nang. (2024, May 9). Cassation Decision No. 07/2024/HS-GDT.
- Hoge Raad der Nederlanden. (2025, February 27). *About the Supreme Court*. Retrieved from <https://www.hogeraad.nl/english/>
- International Covenant on Civil and Political Rights. (1966, December 16). United Nations General Assembly.
- Mai, T. H. (2021). The nature of cassation in Vietnamese and French criminal procedure. *Law Journal*, 02, 66.
- Nguyen, N. C. (2018). *Textbook on the basic principles of criminal procedure law*. National University of Hanoi Publishing House.
- Nguyen, T. M. (2021). On the nature of appellate review. *People's Court Journal*, 09(3).
- Phan, T. T. M. (2023). Recommendations for improving the provisions of the 2015 Criminal Procedure Code on the scope of appellate review. *Procuratorial Science Journal*, 03.
- Resolution No. 27-NQ/TW. (2022, November 9). Central Committee of the Communist Party of Vietnam on continuing to build and perfect the socialist rule-of-law state in the new period.
- Ross, K., Bidegain, A. M., & Johnson, T. M. (Eds.). (2022). *Christianity in Latin America and the Caribbean*. Edinburgh University Press.

Supreme People's Court of Vietnam. (2023, September 14). Cassation Decision No. 09/2023/HS-GDT.

Tran, T. (2023). On the institution of cassation and reopening in criminal procedure. Dân chủ pháp luật. Retrieved from <https://danchuphapluat.vn/ban-ve-che-dinh-giam-doc-tham-tai-tham-trong-to-tung-hinh-su>

Tran, V. D. (2016). *Cassation and reopening of judgments or decisions that have taken legal effect*. In N. H. Binh (Ed.), *New contents in the 2015 Criminal Procedure Code*. National Political Publishing House.

Zbigniew, M. (2021). Principle of instances of criminal proceedings (Doctoral dissertation, Faculty of Law and Administration, University of Łódź). Retrieved from <https://aut.ac.nz.libguides.com/c.php?g=685064&p=4840648>

Zygmunt, W., & Morgala, S. (2024, May 29). Cassation appeal in Polish civil procedure. TaylorWessing. Retrieved from <https://www.taylorwessing.com/en/insights-and-events/insights/2024/05/cassation-appeal-in-polish-civil-procedure>