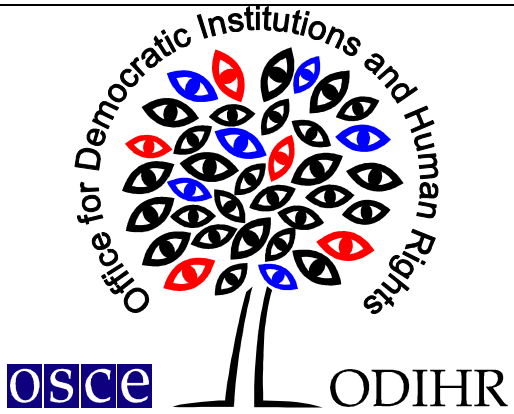
Warsaw, 29 November 2012 Opinion-Nr.: JUD-ARM/212/2012 (LB) www.legislationline.org	

OPINION ON SELECTED ISSUES REGARDING THE ADMISSIBILITY OF APPEALS TO THE CASSATION COURT OF THE REPUBLIC OF ARMENIA

Based on an unofficial English translation of the relevant laws provided by the OSCE Office in Yerevan

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I. INTRODUCTION

1. *The 2012-2016 Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia (hereinafter the "Strategic Programme"), published in June 2012, envisages a number of measures aimed at ensuring that the legislative and judicial power in Armenia complies with the criteria of a modern state based on the rule of law. One of the focus areas of the Strategic Programme is related to improving the effectiveness and unified application of the law by the Cassation Court.*[1]

2. *Against this background, the Chairman of the Cassation Court of the Republic of Armenia addressed the Head of the OSCE Office in Yerevan on 21 July 2012 with a request for legal expertise on two questions related to the admissibility of appeals to the Cassation Court.*[2]

3. *As per established procedure, the OSCE Office in Yerevan forwarded the request to the OSCE/ODIHR. The current Opinion is provided in response to the above request.*

II. SCOPE OF REVIEW

4. The scope of the Opinion is limited to the request of the Cassation Court, which asks for support through the examination of best international practices on two issues:

   - The legal admissibility requirements of appeals to the Cassation Court.
   - Legal requirements as to the reasoning of decisions issued by the Cassation Court after appeals proceedings.

5. The Opinion covers only the above-mentioned questions. Thus limited, the Opinion does not constitute a full and comprehensive review of all available legislation or other issues pertaining to appeals to the Cassation Court of Armenia, including pertinent provisions in civil, criminal and administrative procedural legislation.

6. The ensuing recommendations are based on international and domestic legal provisions, as found in the Constitution of Armenia and relevant domestic

[1] Strategic Programme, par 7.1.

[2] The request also contains reference to the issue of obtaining comparative statistical data on the number of inhabitants compared to number of judges and on judicial workload, an issue that will not be covered in this Opinion. The Council of Europe's Commission for the Efficiency of Justice (CEPEJ) collects statistical data on the functioning of justice systems in all CoE member states. Relevant data from 2010 regarding the additional question is available at the CEPEJ's website: <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp>.

legislation as well as in international agreements and commitments ratified and entered into by the Republic of Armenia.[3]

7. The Opinion is based on an unofficial translation of the Judicial Code of Armenia[4] (hereinafter "the Judicial Code"), which has been attached to this document as Annex 1. Errors from translation may result.

8. This Opinion is without prejudice to any written or oral recommendations and comments to this or other related legal provisions that the OSCE/ODIHR may make in the future.

III. ANALYSIS AND RECOMMENDATIONS

1. Legal Admissibility Criteria for Appeals to the Cassation Court

9. The Cassation Court of Armenia is the highest instance court in the country (except for constitutional matters where the Constitutional Court has exclusive jurisdiction), and its prime function is to "ensure uniformity in the application of law".[5] The purpose and powers of the Cassation Court are set out in Article 50 of the Judicial Code, and include the criteria for admitting appeals (Article 50 par 3). The admissibility criteria for cases must be very carefully construed so as to allow the Cassation Court to fulfil its important function in guaranteeing uniformity in the application of the law.

10. In a system based on judicial independence, the role of the highest court is, *inter alia,* to ensure the consistency of the courts' interpretations of legal acts through decisions in individual cases following appeals procedures. In the civil law tradition, legal consistency is upheld by the lower courts' tendency to follow the principles developed by the higher courts in order to avoid their decisions being quashed on appeal. This stands in contrast to the common law tradition, where legal precedents are binding.[6] In the civil law tradition, binding guidelines, instructions or explanations issued by the higher courts to lower courts are

[3] Of particular relevance for the purposes of this Opinion are the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, (signed on 4 November 1950, entered into force on 3 September 1953, and ratified by the Republic of Armenia on 26 April 2002) (hereinafter "ECHR") and the United Nations International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966, and acceded to by the Republic of Armenia on 23 June 1993) (hereinafter "ICCPR"). See also relevant OSCE Commitments, notably the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 5 June - 29 July 1990) (Copenhagen Document), available at: <http://www.osce.org/odihr/elections/14304>, par. 5, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991), pars. 19 and 20, and the Document of the Istanbul Meeting (19 November 1999), Charter for European Security: IV. Our Common Instruments, par. 45. Brussels Declaration on Criminal Justice Systems, Ministerial Council of the OSCE (MC.DOC/4/06). See also OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (23-25 June 2010).

[4] Judicial Code of the Republic of Armenia (21 February 2007).

[5] Constitution of the Republic of Armenia (5 July 1995).

[6] See CDL-AD(2010)004 Report on the Independence of the Judicial System, Part I: the Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (12-13 March 2010), par 71.

regarded as directly restricting the independence of the individual judges.[7] It is feared that judges at lower courts, instead of acting as independent judges, ruled only by the letter of the law, would in such cases rather approach their duties as an ordinary civil servant, thus obeying instructions of those they would perceive as their superiors. This way of behaviour is seen as not being in accordance with the principles of the independence of the judiciary.[8]

11. In Armenia, which in principle follows the civil law model, there are three specific cases of admissibility of appeals before the Cassation Court, which will be described in greater detail below.

1.1. First Ground for Admissibility: a Complaint of Material Significance to the Uniform Application of the Law

12. The first ground for admissibility of the Cassation Court in Article 50 par 3 (1), is intended to allow the Cassation Court to develop jurisprudence. It mandates the Cassation Court to admit cases for examination when this may be of "material significance for the material application of law". This provision reflects the Cassation Court's mandate to ensure uniformity in the application of the law (see par 9 *supra*); from this mandate, it follows that questions which are of special significance to the material application of the law need to also be considered before the Cassation Court. The wording of this article is also comparable to the admissibility requirements of other high courts in Europe.[9]

1.2. Second ground for admissibility: a complaint exposing a prima facie conflict with the Court's earlier decisions

13. As regards the second ground for appeal in Article 50 par 3 (2), this opens the opportunity for the Cassation Court to admit cases where the lower court(s') decision(s) conflict(s) with the previous jurisprudence of the Cassation Court.

14. In Armenia, the jurisprudence of the Cassation Court appears to be binding on lower courts according to Article 15 par 4 of the Judicial Code. Regardless of this fact, similar admission grounds can also be found in other jurisdictions in Europe,

[7] See e.g. ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, par. 35 and CDL-AD(2010)004 Report on the Independence of the Judicial System, Part I: the Independence of Judges, adopted by the Venice Commission at its 82nd Plenary Session (12-13 March 2010), pars. 70-71.

[8] See e.g. Recommendation No. R (2010)12 of the Council of Europe Committee of Ministers on Judges: Independence, Efficiency and Responsibilities, adopted by the Committee of Ministers on 17 November 2010, pars 22-23 and the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), value 1.1 and 1.4.

[9] See e.g. the Swedish Code of Judicial Procedure (1942:740), Chapter 54, Article 10 (1*):* "Leave to appeal may be granted only if […] it is of importance for the guidance of the application of law that the Supreme Court considers the appeal […]".See also the German Civil Procedure Code (BGBl. I S. 3202, ber. 2006 I S. 431, 2007 I S. 1781), Section 543 par 2, granting leave to appeal to the Federal Supreme Court in cases of "fundamental importance", and where required "to develop law or ensure consistency of jurisprudence".

where the decisions of the highest instance court are *not* binding.[10] In principle, it again follows from the Cassation Court's mandate of ensuring consistency of jurisprudence that it is required to deal with cases where lower courts do not follow its jurisprudence (see par 9 *supra*).

15. While not directly related to the admissibility of appeals before the Cassation Court, it is noted that according to Article 155 par 5 of the Judicial Code, a Cassation Court decision determining that a judicial decision of a lower court was obviously illegal or an obvious and grave violation of the rules of procedure, can form the ground for disciplinary proceedings against a judge. Given the fact that Cassation Court decisions seem to be binding on lower courts (Article 15 par 4 of the Judicial Code), this could potentially mean that non-observance of Cassation Court decisions could lead to disciplinary action against a judge. In addition, such disciplinary proceedings can be instigated by the Cassation Court Chairman, according to Article 155 par 2 (1) of the Judicial Code. If failure to follow the Cassation Court judgments can form the basis for disciplinary action in this manner, this would constitute a serious infringement of the independence of the judiciary.[11] It is therefore recommended to further clarify whether the non-observance of Cassation Court decisions can lead to disciplinary proceedings under Article 155 of the Judicial Code.

16. The prime functions of appellate courts are to examine the decisions of lower courts and to change or quash decisions that are not in line with the law. In contrast, the highest court of a country is typically more restrictive in this regard and only admits cases where a *grave* error has been committed.[12] In some jurisdictions there is a listing of which breaches of the law will form grounds for admissibility of appeals to the highest court (often, primarily procedural errors, or "errors of law", as opposed to "errors of fact"), possibly together with a catch-all clause to also allow for admission of appeals on other grave breaches of the law.[13]

1.3. Third Ground for Admissibility: a Complaint Exposing a Prima Facie Judicial Error Entailing Potentially Grave Consequences

17. The third admissibility ground under Article 50 par 3 (3) of the Judicial Code allows the Cassation Court to admit cases on the ground that there has been a "prima facie judicial error, which may give or has given rise to grave consequences". This admission ground appears to refer to questions of law rather than questions of fact, which is common in European states.[14] Read together with

[10] The Criminal Procedure Code of the Republic of Moldova (No.122-XV), 14 of March 2003, Article 7 par. 7 and Article 26 compared to Article 427 par 16.
[11] For previous discussions on this issue, see Conclusions and Recommendations of the round table on Kyiv Recommendations and Judicial Independence in Armenia, 28 June 2011, Yerevan.
[12] See e.g. the Swedish Code of Judicial Procedure (1942:740), Chapter 54, Article 10 (2).
[13] See e.g. the Polish Criminal Procedure Code, Journal of Laws 1997, No. 89, item 555 (entry into force 1 September 1998, last amended 13 July 2012), Article 439, and the Criminal Procedure Code of the Republic of Moldova (No.122-XV), 14 of March 2003, Article 427.
[14] *Hauser v Austria,* application no. 37301/03, ECtHR judgment of 7 December 2006, para 52.

Article 57 of the Judicial Code, this admissibility ground seems to refer to both procedural errors and substantial errors. However, it is not clear which specific errors would be covered, only that there should be a risk of "grave consequences."

18. In many countries, when determining admissibility, the highest court will foremost evaluate whether a procedural or substantial judicial error in itself is to be determined as grave, rather than trying to determine its possible consequences.[15] There are advantages of such an approach. For example, a failure to hold a trial in public (except for cases where the trial must be held *in camera*), might not necessarily risk resulting in "grave consequences", but would nonetheless constitute a serious procedural violation, warranting a second-level appeal before the highest court, in many jurisdictions.[16] When determining admissibility criteria, it therefore appears advisable to aim at the nature of the judicial error itself irrespective of its possible consequences. It is therefore recommended to develop the admissibility ground in Article 50 par 3 (3) of the Judicial Code so that it, at least alternatively to the determination of the consequences, it also refers to the gravity of the judicial error.

19. In addition, it might be considered helpful to list a number of grave breaches that will give rise to the admissibility of an appeal, as exists in some other countries (see par 16 *supra*). This might be helpful for applicants to more properly argue their appeals to the Cassation Court. Also, the Cassation Court would be able to more effectively focus its work, and its decisions would be based on more clear and transparent criteria. In addition, such an approach might enhance legal certainty and public trust in the administration of justice. It is therefore recommended to consider further developing the admissibility ground in Article 50 par 3 (3) of the Judicial Code by listing examples of grave judicial errors that will form the basis for admissibility of appeals, together with a catch-all provision to cover other possible grave judicial errors.[17]

20. Alternatively, the Armenian Cassation Court's third admissibility ground can be assessed in a different manner. The Cassation Court's objective in relying on the "grave consequences" criterion could be to optimize its capacity to filter inadmissible appeals in a similar way to the European Court of Human Rights and its "significant disadvantage" admissibility criterion. While recalling the specific nature and jurisdiction of such court, it is noteworthy to observe that since 2010, the European Court of Human Rights (ECtHR), in addition to existing

[15] See e.g. the Swedish code of Judicial Procedure (1942:740), Chapter 54, Article 10 (2): "Leave to appeal may be granted only if […] there are extraordinary reasons for such a determination, such as that grounds exist for relief for substantive defects or that a grave procedural error has occurred or that the result in the court of appeal is obviously due to gross oversight or to gross mistake." See also listings of errors that will form the grounds for admissibility in the Polish Criminal Procedure Code, Journal of Laws 1997, No. 89, item 555 (entry into force 1 September 1998, last amended 13 July 2012), Article 439 par 1. See also the Criminal Procedure Code of the Republic of Moldova (No.122-XV), 14 of March 2003, Article 427.

[16] See, e.g., the Criminal Procedure Code of the Republic of Moldova (No.122-XV), 14 of March 2003, article 427 par. 1 subpar. 3: "The judgements of the appeal instance may be subject to recourse in order to fix errors of justice committed by merits and appeal instances based on the following grounds: […]the court hearing was not public, except for the cases when the law does not stipulate otherwise"..

[17] See for example Polish, Moldovan and German legislation mentioned in note 14 *supra*..

inadmissibility grounds, will not consider individual applications where the applicant did not suffer any "significant disadvantage."[18] Although the concept of "significant disadvantage" can seem ambiguous at first,[19] subsequent case-law of the Court has provided further interpretation on this notion, which is understood as an additional requirement for the complainant to the ECtHR to have suffered a substantial damage which could be measured, among other things, in pecuniary terms.[20]

21. Similarly, the "grave consequences" suffered by the applicant to the Cassation Court because of a judicial error made by a lower court decision could be evaluated in quantitative (financial consequences) or qualitative (serious nature of the consequences) terms. Nevertheless, it is recommended that the Cassation Court further clarify the essence of what constitute "grave consequences". Clarifying this notion will help providing additional legal certainty which will only be beneficial to the citizens attempting to realize their rights. Court practice directions, regulations, or case-law issued by the Cassation Court could help in this interpretative task.

2. Reasoning of Rejection Decisions of the Cassation Court

22. The right to receive a reasoned judgment from a court of law is an essential fair trial right in both criminal and non-criminal cases. Reasoned decisions are required for several reasons: for the affected litigant to be able to know that his or her arguments have been properly examined, but also for the appellant to be able to lodge a reasoned appeal and to enable public scrutiny of judicial decisions.[21] Reasoning therefore contributes to better acceptance by the parties of the outcome of a dispute, reduces room for arbitrariness, and increases legal certainty. Generally speaking, the quality of a judicial decision largely depends on the

[18] See Article 35 (3) (b) of the European Convention on Human Rights (adopted on 4 November 1950, entered into force on 3 September 1953, and modified by Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, which was adopted on 13 May 2004 and entered into force on 1 June 2010), which reads: "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: … (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

[19] See generally the analysis on the "significant disadvantage" of the ECtHR Practical Guide on Admissibility Criteria, prepared by the Research Division of the ECtHR, 2011, page 74, available at http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+analysis/Admissibility+guide/ (last visited on 06/11/ 2012).

[20] According to the ECtHR Practical Guide on Admissibility Criteria (ECtHR Practical Guide), the ECtHR will adopt a broader approach whereby "[f]actors which could be taken into consideration are the financial impact on the applicant, although not exclusively […] Nevertheless, the Court will be conscious of the fact that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in light of the person's specific condition and the economic situation of the country or region where he or she lives. », see Paragraph 383 of the ECtHR Practical Guide.

[21] *Hadjianastassiou v. Greece*, application no. 12945/87, ECtHR judgment of 16 December 1992, par 33 and Tatishvili v. Russia, application no. 1509/02, ECtHR judgment of 22 February 2007, par 58.

quality of its reasoning.[22] However, the extent of the reasoning that is needed in each case depends on the nature and circumstances of the case in question.[23]

23. Appellate courts are in general under an obligation to reason their decisions, although their reasoning does not necessarily have to be as extensive as that of first instance courts. In particular, appellate courts can rely on the decision of the first instance court, if this is properly reasoned.[24]

24. In many jurisdictions anyone appealing a case to an appellate court or to the highest court must apply for *leave to appeal*.[25] Generally, the appellant will in these cases be provided with an opportunity to submit the reasons for the appeal along with any supporting evidence in writing to a higher instance, which will decide on the request on the basis of the submissions. Only if granted leave to appeal, will the applicant be able to obtain a new trial and a full examination of the appeal by a higher instance. In decisions on whether to grant leave to appeal, it may be sufficient for the court to simply accept or reject it without further reasoning.[26]

25. The system by which the Armenian Cassation Court determines admissibility is a *prima facie* determination of the lawfulness of the decision of the appellate court and can be equated to a leave to appeal procedure. According to Article 50 par 4 of the Judicial Code, decisions to reject submissions on the grounds that they do not fulfil the criteria in Article 50 par 3 (2)-(3) should be reasoned. As mentioned earlier, international standards vary in this regards, in some other jurisdictions there is no obligation to provide substantial reasoning when the highest court rejects an appeal as inadmissible.[27] When the requirement for a reasoned decision is not clearly spelled out- leading to the assumption that reasoning is not necessary- highest courts have developed distinctive solutions as to what level of detail the reasoning section should go into. As an example, the United Kingdom's Supreme Court relies on a succinct set phrase to deny permission for leave: the application for leave to appeal is not granted in cases where "the application does not raise an arguable point of law of general public importance which ought to be

[22] See generally on the quality of judicial decisions, the Consultative Council of European Judges (CCJE) Opinion no.11, 2008, available at http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp (last visited on 06/11/2012).

23 *Van de Hurk v. the Netherlands*, application no. 16034/90, ECtHR judgment of 19 April 1994, par 61.

[24] *Garcia Ruiz v. Spain*, application no. 30544/96, ECtHR judgment of 21 January 1999, par 29.

[25] Since 2001, the French Cassation Court has the possibility to subject an a priori inadmissible application to an optional admissibility examination by a restrained formation of the Cassation Court, see Article 1014 of the Code de procédure civile and Article 567-1-1 of the Code de procédure pénale. In the United Kingdom, any case to be heard by the Supreme Court within its scope of jurisdiction must first be granted permission to appeal, see Rule of the Court no.11 of the Supreme Court of the United Kingdom.

[26] *E.M. against Norway*, [1995], European Commission of Human Rights, application no. 20087/92, The Law, par 2. See also Opinion no. 11 of the CCJE, note no.11, page 7.

[27] See e.g. the Polish Criminal Procedure Code, Journal of Laws 1997, No. 89, item 555 (entry into force 1 September 1998, last amended 13 July 2012), Article 535 par 2 which states " The Supreme Court, if it finds the extraordinary appeal without substance, shall decide to dismiss the same in a session. The parties shall be entitled to participate in the session. The dismissal of a cassation as lacking substance shall not require the provision of reasons thereof in writing."

considered by the Supreme Court at this time."[28] Similarly, the French Cassation Court uses the following succinct and general phrase to reject inadmissible applications after a brief overview of the procedural history: "[g]iven that the appeal ground is not of a nature which would allow for the admission of the appeal, the Court declares the appeal not admissible."[29] Beyond this, there is no additional reasoning requirement in the respective French legislation.

26. However, irrespective of international practice which might be more lenient, the Armenian Cassation Court is bound by Article 50 par 4 of the Judicial Code to abide by stricter standards in terms of reasoning and is thus under the obligation to provide reasoning in its admissibility decisions.[30] The required reasoning should in these cases serve the purpose of transparency and legal clarity and thus contain minimum elements. Therefore, the Cassation Court is encouraged to develop certain minimum standards on reasoning in admissibility decisions which take into account the above mentioned purpose of transparency and legal clarity.

27. While developing such minimum standards on legal reasoning in admissibility decisions, the Cassation Court could take recourse to existing international good practices on the issue. Opinion no.11 of the Consultative Council of European Judges (CCJE) on the quality of judicial decisions could be of use in this context.[31] Key recommendations regarding legal reasoning in judicial decisions which could be of relevance to the Armenian Cassation Court are presented below.

2.1. Characteristics of the Reasoning

28. As judicial decisions shall be accessible and clear to the general public and accepted by the parties involved, their reasoning should conform to certain characteristics. The reasons would need to be consistent, clear, unambiguous and not in themselves contradictory. They must further allow the reader to follow the chain of reasoning which led the judge to the decision.[32] Clarity and consistency

[28] See the monthly summary of leave decisions issued by the Supreme Court of the Untied Kingdom at the following link: http://www.supremecourt.gov.uk/news/permission-to-appeal.html (last visited on 06/11/2012).

[29] Unofficial translation from French language. See, as an example, Cour de cassation, Chambre commerciale, 24 novembre 2009, decision no. 10557.

[30] In this context, see the judgments SDV 690 and 795 of the Armenian Constitutional Court of 9 April 2007 and 8 October 2008 respectively, in relation to relevant proceedings of the Civil Procedure Code of Armenia, in which the Constitutional Court found that also in the case of decisions of the Cassation Court in appellate proceedings, the absence of reasoning on the grounds for inadmissibility of an appeal cannot guarantee observance of fair judicial protection, legal certainty and the main principles of the rule of law. The Constitutional Court found that reasoning such decisions is an important guarantee in terms of the access to justice and due protection of the constitutional rights of individuals in courts. A similar solution is adopted under the Criminal Procedure Code of the Republic of Moldova (No.122-XV), 14 of March 2003, Article 432 par. 2.

[31] Opinion no. 11 and other opinions of the CCJE can be found at http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp. The CCJE is an advisory body of the Council of Europe dealing with issues of independence, impartiality and competence of judges

[32] See Opinion no. 11 of the CCJE, par. 36.

in the court's chain of reasoning will further contribute to the parties' acceptance of the decision and help remove doubts regarding the proper examination of the arguments raised during court proceedings.

2.2. Scope and length of the legal reasoning

29. The statement of reasons in a judicial decision should only respond to relevant arguments capable of influencing the resolution of the dispute.[33] While ensuring that the reasons focus on the relevant points of law which impact on the outcome of the dispute, judges should also make sure that the reasoning provides an answer to the parties' submissions, i.e. to their different heads of claim and to their grounds of defence. The reasoning therefore demonstrates to the litigants that their submissions have been examined and that the judge has duly considered them. [34]

30. Finally, it is of key importance to strike a proper balance between conciseness and the proper understanding of the decision.[35]

2.3. *Legal Basis for the Reasoning*

31. To ensure their legitimacy and legality, the statements of reasons should refer to the relevant provisions applicable in a particular case. This applies to national legislation, but also to European and international law, if applicable. Where appropriate, reference to national, European or international case-law, including reference to case-law from courts of other countries, as well as reference to legal literature, can also be useful.[36]

2.4. Legal Certainty and Departure from Precedent

32. As established earlier when analyzing Article 50 par 3 (2) of the Judicial Code, the Armenian legal system follows, at least with regard to Court of Cassation decisions, the principle of judicial precedents. In drafting the legal reasoning of inadmissibility decisions, the Cassation Court will most likely rely on arguments used in past decisions to dismiss inadmissible applications. This will ensure that legal certainty is guaranteed for cases which present similar factual and/or legal issues. At the same time, it is a judge's role to interpret the law. Within this function, Cassation Court judges might need to depart from the previous case law. While doing so, and without prejudice to the rules governing the principle of precedents in the Armenian legal system, the Cassation Court should clearly mention departure from previous case law in the decision. If appropriate, the

[33] See Opinion no. 11 of the CCJE, par. 39.
[34] See Opinion no. 11 of the CCJE, par. 38.
[35] See Opinion no. 11 of the CCJE, par. 40
[36] See Opinion no. 11 of the CCJE, par. 44.

Court could specify that this new interpretation is only applicable as from the date of the decision in issue or from a date stipulated in such decision.[37]

[END OF TEXT]

[37] See Opinion no. 11 of the CCJE, para. 49.

Annex 1

1. Excerpts of the

JUDICIAL CODE OF THE REPUBLIC OF ARMENIA

(21.02.2007)

Chapter 2: Principles of the Functioning of the Judiciary

[…]

Article 15. Equality before the Law and Court

[…]

4. The reasoning of a judicial act of the Cassation Court or the European Court of Human Rights in a case with certain factual circumstances (including the construal of the law) is binding on a court in the examination of a case with identical/similar1 factual circumstances, unless the latter court, by indicating solid arguments, justifies that such reasoning is not applicable to the factual circumstances at hand.

[…]

Chapter 8: Cassation Court

Article 50. Purpose and Powers of Cassation Court

1. The purpose of the Cassation Court's activity is to ensure the uniform application of law. In carrying out this mission, the Cassation Court shall strive to facilitate the development of law.

2. Based on a complaint in cases and in the procedure stipulated by law, the Cassation Court shall review judicial acts of appellate and administrative courts.

3. The Cassation Court shall admit a complaint, if the Cassation Court believes that the complaint has justified that:

1) The Cassation Court's decision on the issue raised in the complaint may be of material significance to the uniform application of law; or

2) The reviewed judicial act prima facie conflicts with earlier decisions of the Cassation Court; or

3) A lower court has made a prima facie judicial error, which may give or has given rise to grave consequences.

4. The Cassation Court's decision on returning a cassation complaint because the grounds stipulated by sub-paragraphs (2) and (3) of Paragraph 3 of this Article are absent, must be reasoned.

5. Within the limits of its jurisdiction, the Cassation Court shall review substantive judicial acts of lower courts and the Appellate Court's decisions made as a result of reviewing interim judicial acts.

6. The Cassation Court shall review interim judicial acts in exceptional cases stipulated by law.

7. In cassation review proceedings, the Cassation Court shall review a judicial act only within the scope of the grounds and justifications presented in the cassation complaint.

8. The judicial territory of the Cassation Court is the territory of the Republic of Armenia.

(Article 50 modified 26.12.08 HO-235-N, 04.10.10 HO-140-N,01.12.10Ã 28.10.10 HO-136-N laws)

[...]

Article 57. Grounds for Lodging a Cassation Complaint

A ground for lodging a cassation complaint is a judicial error, i.e. such a violation of substantive or procedural law that could influence the outcome of the case.

(Article 57 modified 26.12.08 HO-235-N law)

[...]

Article 155. Instigating Disciplinary Proceedings against a Judge

1. The following shall have the right to instigate disciplinary proceedings against first instance and appellate court judges and chairmen:

1) The Minister of Justice; and

2) The Disciplinary Committee of the Justice Council.

2. The following shall have the right to instigate disciplinary proceedings against a Cassation Court chamber judge and chamber chairman:

1) The Cassation Court Chairman; and

2) The Disciplinary Committee of the Justice Council, upon motion by the Ethics Committee of the Council of Court Chairmen.

3. The Disciplinary Committee of the Justice Council, upon motion by the Ethics Committee of the Council of Court Chairmen, has the right to file disciplinary proceedings against the Cassation Court Chairman.

4. If the Minister of Justice or the Cassation Court Chairman instigated disciplinary proceedings, then he shall notify the Disciplinary Committee of the Justice Council of such instigation and of the alleged offence. In case of instigating disciplinary

proceedings against a first instance and appellate court judge or chairman, the Disciplinary Committee of the Justice Council shall notify the Minister of Justice of such instigation and of the alleged offence. In case of instigating disciplinary proceedings against a Cassation Court chamber judge or chamber chairman, the Disciplinary Committee of the Justice Council shall notify the Cassation Court Chairman of such instigation and of the alleged offence. Two concurrent sets of proceedings shall not be instigated against the same person in connection with the same offence.

5. The reasons for instigating disciplinary proceedings are the following:

1) A decision of the Cassation Court, which confirms that an obviously illegal judicial act was made in the administration of justice when resolving the case in substance, or the judge committed an obvious and grave violation of the rules of procedural law in the administration of justice;

2) An application by the person;

3) A communication from a state or local government body or official;

4) A motion filed by the Ethics Committee of the Council of Court Chairmen;

5) The finding, as a result of summarizing or studying court practice, of an act that gives rise to disciplinary liability; or

6) The finding, by the persons instigating the proceedings, of an act that gives rise to disciplinary liability.

6. The application, communication, or motion stipulated by Paragraphs 5(1), 5(3), and 5(4) of this Article, which does not contain prima facie evidence of a judge having committed an act that gives rise to disciplinary liability, shall be returned to the person that submitted it, without any examination.

7. In case of not instigating proceedings on the basis of the application, communication, or motion stipulated by Paragraphs 5(1), 5(3), and 5(4) of this Article, the person responsible for instigating proceedings does not have to substantiate in his response the reasons for not instigating proceedings.

Annex 2:

CONCLUSIONS AND RECOMMENDATIONS FROM THE KYIV RECOMMENDATIONS AND JUDICIAL INDEPENDENCE IN ARMENIA ROUND TABLE ON 28 JUNE 2011, YEREVAN

The participants of the roundtable recommend that the Government of the Republic of Armenia revise the current Judicial Code and related legislation taking into consideration the spirit and policy suggestions of the *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia*; in particular:

-Bodies of judicial administration and self-governance: replace the Council of Court Chairpersons with a body elected by the General Assembly of Judges, and representing the judiciary as a whole and at all levels, including chairpersons (legislation and institutional reform).

-Case assignment: introduce and regulate by law a genuinely automated system that excludes any influence and discretion in the process; deviations from the system should also be regulated by law and narrow in scope.

-Court chairs' appointment/selection and term in office: consider a system whereby peer judges elect the chair of a particular court for appointment, as well as a system limiting the duration of a term and the maximum number of terms as court chair.

-Binding nature of case law and precedent decisions of the Cassation Court: more discussion is needed to clarify and regulate by law certain questions related to the implementation of such system in Armenia, in light of the Kyiv Recommendations, e.g. which decisions should have the effect of a precedent.

-Discipline: the criteria for disciplinary sanctions regarding obvious and grave violation of law should be clarified;
-consider whether the Cassation Court should be competent to trigger and pre-determine disciplinary procedures by taking decisions regarding judges mistakes in adjudication (Art. 155-5 of the Judicial Code: "obviously illegal judicial act was made in the administration of justice when resolving the case in substance" or "an obvious and grave violation of the rules of procedural law in the administration of justice");
-Possibilities for introducing judges' right to appeal decisions on disciplinary measures should be considered.

-Justice academy: the draft law and ongoing institutional reforms should ensure that the academy is independent from executive power.

-Appointment, promotion of judges and termination of their powers: within the framework of the current constitution consider possibilities to regulate the discretion of the President when refusing a candidate for appointment or promotion, or when terminating the powers of a judge upon proposal of the Council of Justice.