

Procedure for Cassation Division

Description

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Background

The Federal Supreme Court of Ethiopia enacted a directive namely Directive on the Procedure for Cassation Division No 17/2023 (here after the Directive). The Directive will be effective as of April 27/2023. The Directive bases its content from the Federal Court Proclamation No 1234/2021 (the Proclamation) Article 2(4) on definition of basic error of law, Article 27 on Application Procedure for Cassation and Article 28 Petition and Proceedings in Cassation Division. This brief article will attempt to cover the basic new additions introduced in the Directive. The article deals with formats and contents of an application, proceedings in cassation division, reply and counter reply, introduction of amicus curiae, condition requiring cassation division sitting with not less than seven judges, judgment writing incorporating binding legal interpretation and handling of costs of litigation in cassation division. A short summary shall conclude the article.

Format and Content of an Application

The application presented for cassation by an applicant should be written in power geez in a font of 12, paper margin 1 inch, space between lines 1.5 in three pages not including the introductory part. This is an attempt to restrict applicants who write applications in a long and congested manner with several pages. The judges used to have a hard time reading as well as understanding the issue.

The Directive introduced a new approach to limit the application to the standard format by allowing the applicant to attach an additional explanation. The applicant can attach additional explanation that has direct relevance to the issue at stake mentioned on the application. This is a new way of addressing concerns of some applicants that feel what is written in brief on the application is not enough to explain the basic error of law. Hence allowing additional explanation will enable the applicant to stick with the required format and content of presenting his/her formal cassation application. However, the cassation division is with liberty not to look into the additional explanation if the cassation division thinks the application sufficiently argues on the basic error of law of the case.

The Directive has incorporated at the end in the form of attachment formats in which cassation application, reply and counter reply has to follow. The registrar will make sure these formats are being adhered to. Such follow up and details will enable uniformity of applications, reply and counter reply. The Directive also gave the cassation division judges the power to demand the amendment of applications in line with the formats indicated in the Directive.

Proceedings in Cassation Division

Article 28(2) of the Proclamation provides that where the cassation division concludes upon examination of the application that there is no basic or fundamental error of law, the division shall order

the dismissal of the application. The Directive added an obligation on the cassation division judges to write the reasons why the division dismissed the application on the file. This is one of the key aspects the Directive makes a positive impact in proceedings in cassation division. Earlier the usual way of dismissing a case has been by one line stating the case is dismissed. But now the judges have to jot down the reasons why the case is being dismissed.

When the cassation division concludes that the application has merit, the division will frame issues or issues. Then the division will order the application, summons and the framed issues to be served to the respondent to reply in writing. The question is: will the additional explanation, if any, will also be served to the respondent? The Directive is not clear on this point. The applicant will also be allowed to counter reply.

The new introduction on the Directive is that the cassation division can alter or amend the already framed issue or issues. When such alteration or amendment happens, the Directive says, the Division has to hear the argument of the parties on these altered or amended issues. However the Directive doesn't elaborate how such hearing will be conducted. Is the hearing conducted in writing or oral? If the hearing is in writing, will the respondent be given the chance to reply and then the applicant to counter reply? Or both parties will be asked to submit their argument on the framed issues in writing. These proceedings need to be clarified in the Directive. Nonetheless, the civil or criminal procedure codes are there to cover what has not been indicated in the Directive as well.

There were a number of cases whereby the three judges of the cassation division framed an issue and the respondent replied on those issues. But the five judges ruled on a different issue which was not framed previously. The respondent or the applicant were not mentioned in those cases as submitting their opinion on the changed issue. A case in point can be found in the following case: [CASSATION DECISION ON ADMINISTRATIVE PROCEDURE PROCLAMATION 1183/2020](#) The Directive has now provided a solution for such changes in issues by the five judges. The parties to the case will be given the chance to be heard on the newly formed issues.

Reply and Counter Reply

The respondent has to reply in brief based on a) the basic error of law raised on the application and b) the issue framed by the cassation division. The applicant's additional explanation, if any, are not mentioned as areas in which the reply has to cover. If there are preliminary objections, the reply should contain these objections together with the rest of the reply. If the respondent has additional explanation relevant to the issue at hand, the respondent is given the right to attach such additional explanations to the respondent's reply.

The counter reply has to be based on the reply of the respondent and cannot contain new facts and arguments. The counter reply is restricted to the reply only and does not seem to extend to the additional explanation attached with the reply by the respondent.

Amicus Curiae

The Directive included amicus curiae- an imperial advisor to a court of law in a particular case. The cassation division may decide to receive the opinion of amicus curiae on particular cassation application and issue. Such advice shall be presented in writing. The Division may order the oral hearing of the advisors in open court as well. The questions remain as to who covers the cost for the

advisors, the court or the litigants? Is the advice by the amicus curiae binding on the division or not?

Cassation Division Sitting with not less than Seven Judges

Article 26(1) of the Proclamation stated that the cassation division presided by 5 judges may by its own initiation or the application filed by one of the litigating parties, direct the case to be heard by a cassation division of not less than 7 judges. The Directive made it clear that the reason the case will be seen by not less than 7 judges is because of the need to change or amend previously held legal binding interpretation.

Binding Legal Interpretation in a Judgment

The Directive contains a provision on Article 15(4) that states the fact that cassation division is duty bound to write, in case where the Division gave binding legal interpretation, a short summary of the binding legal interpretation. This provision will make it easier for lower courts and any interested parties to be clear on what has been the binding legal interpretation of a certain law. This will also avoid confusion as to what has been entered as a binding legal interpretation by the cassation division.

Costs

The normal course of decision regarding costs in cassation division has been for the litigating parties to cover their costs by themselves. These were decided to avoid cost litigation within the cassation division. This trend is changed by the Directive. The Directive gives the cassation division the right to decide on costs as appropriate including saying the usual i.e cover your own costs. However, the Directive added another procedure whereby the cassation division allows one party to cover the costs of the other party: the cassation division can order the registrar to receive the parties costs and arguments and present for the cassation division to decide on the liquidated sum.

Conclusion

The Cassation Division Procedure Directive No 17/2023 has brought to the table new and improved ways of dealing with cassation division procedures. The objective is to enable the parties to restrict themselves on the basic or fundamental error of law and for the cassation division not to be burdened with unnecessary long arguments that distract and waste time of the judges. The introduction of amicus curiae is a step forward in the right direction. Judgment writing that contains binding legal interpretation in a summary form is also a positive and outstanding introduction by the Directive.

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