

## Law 02-23 on Cassation Resources

Date: June 20, 2023

**The new Law 02-23 on Cassation Resources reaffirms the scope of application of the regulations, with the exclusive purpose of regulating matters in the civil, commercial, labor, real estate, administrative litigation, and tax litigation fields.**

It also confirms the application of the Labor Code for provisions that do not contradict the new Law 02-23 regarding cassation resources.

The matter of criminal law is left under the protection of the former Law 3726 on Cassation Procedures, with its jurisdictional aspects taken over by Law 76-02, modified by Law 10-15, also known as the Dominican Code of Criminal Procedure.

### **I. Jurisdiction of the Supreme Court of Justice and Object of Cassation.**

Law 02-23 reiterates the Supreme Court of Justice's jurisdiction to exclusively handle cassation resources and its role as a judicial body of the Judiciary and jurisdiction throughout the national territory, provided that the admissibility requirements that will be developed later are met.

Under the provisions of the new Cassation Resources Law, the Supreme Court of Justice establishes the division of chambers as follows:

- The First Chamber: will handle cassation resources in civil and commercial matters.
- The Second Chamber: will handle cassation resources in criminal matters.
- The Third Chamber: will handle cassation resources in labor, real estate, administrative litigation, and tax matters.
- The Joint Chambers: will handle all matters in cases where the resources have been filed for the second or third time, as long as they pertain to the same process and involve issues already addressed by the previously mentioned chambers.

It is also reaffirmed that the admissibility of the resource is completely independent of the merits of the litigation, which will only be taken into account in exceptional cases explicitly established by the law.

Furthermore, the law establishes the uniformity of jurisprudence emanating from the Supreme Court of Justice, which guarantees legal certainty and objectivity of the body through a single, comprehensive, and coherent criterion reflected in the decisions it may issue.

## II. Admissibility of Cassation Resources.

It is important to note that Law 02-23 establishes new admissibility criteria, which imply significantly stricter filters, incorporating legal terms that may seem novel in the field.

Among them, the admissibility requirements, the demands for admission, and the time limits for filing the cassation resource are highlighted, as well as the new requirement of depositing the cassation resource through the Secretariat of the Supreme Court of Justice.

### A) On the admissibility of the appeal:

Article 10 of the referenced cassation legislation establishes the first requirement for declaring the admissibility of the appeal as follows:

Type of Sentence:	Origin:
Final Judgments, of Single or Last Instance	<ul style="list-style-type: none"> <li>- When it concerns the status and capacity of individuals.</li> <li>- When it pertains to matters of children and adolescents.</li> <li>- When it deals with consumer rights.</li> <li>- When it relates to interim or provisional measures.</li> <li>- When it involves the annulment of arbitration awards.</li> <li>- When it addresses the recognition and enforcement of foreign judgments.</li> <li>- When it concerns the jurisdiction or competence of the courts.</li> <li>- When the challenged decision decides not to apply a law due to its unconstitutionality.</li> </ul>
Interlocutory or Final Judgments on Incidents	When they conclude the process or order its suspension or dismissal.

It should be noted that, for both requirements of admissibility, it is also required that the appeal has cassational interest, which derives from manifest contradiction with jurisprudence emanating from the Supreme Court of Justice itself, or the absence of any established criterion on the aspect in question.

This means that the cassation appeal must address legally novel matters for the Supreme Court of Justice, or alternatively, it must concern a decision issued by a lower court where a previously given criterion by the Court of Cassation has been omitted.

Likewise, these considerations could be considered as requirements for the admissibility of the appeal, which will be addressed below.

## **B) Requirements for the admission of the appeal:**

The same cassation legislation mentioned above establishes aspects of admissibility that seek to enhance the rigor of the cassation procedure and increase the effectiveness of the Supreme Court of Justice in resolving cases.

These aspects are implicitly determined by the reading of Articles 10, 11, 12, 15, 16, and 18, which are summarized as follows:

1. When the appeal deals with matters indicated by paragraphs 1) and 2) of Article 10 regarding the admissibility of the appeal, as mentioned previously.
2. When the challenged decision omits the application of a legal norm on the grounds of unconstitutionality.
3. When there is a violation of a law, or the application thereof is contradictory or erroneous, provided that such error has influenced the decision made by the judge.
4. When the appellant demonstrates having participated in any capacity in the trial from which the challenged decision in cassation originated.
5. When the cassation memorial is properly motivated, providing precise and understandable reasons that form the basis of the appeal, and must also include the following information:
  - a. a) Specific details of the appellant and their representing attorney, indicating the permanent or provisional professional address for the purposes of the appeal in the National District.
  - b. b) Specific details of the respondents.
  - c. c) Accurate description of the number, date, and court that issued the challenged decision through the cassation appeal in question.
  - d. d) Date of the written submission and its formal conclusions.
6. When the amount discussed before the appealed court in cases related to the refund, restitution, or conviction of pecuniary values exceeds 50 times the minimum wage of the private sector.
7. When the challenged decision deals with the rectification of a presumably flawed decision.

The rectification of the presumably flawed decision referred to in the seventh paragraph above relates to situations where it is possible to request a rectification of the decision issued by a lower court, and the result of such review leads to a new error that can be challenged through the cassation appeal.

Regarding the mentioned permanent or provisional professional address, it refers to the need to establish a specific address in the National District, to which notifications related to the filed cassation appeal will be sent.

It is also noteworthy that it is not possible to file a cassation appeal when it concerns costs and attorneys' fees, or when the challenged decision is limited to ordering the calculation of damages.

### **III. Regarding the new deadlines:**

Like the changes made to the requirements for the admissibility of the appeal, the new Law 02-23 introduces significant changes to the deadlines for filing the appeal, taking into account the subject matter of the challenged decision.

Initially, the deadline for filing the appeal is set at 20 business days, counted from the notification of the challenged judgment, which may vary depending on the distance of the party being notified.

For interim matters or real estate foreclosure cases, the deadline is reduced to 10 business days, counted from the notification of the judgment.

#### **A) Regarding Service of Process**

The appellant must serve the cassation memorial and its corresponding inventory of documents through a Service of Process, which must be carried out within the next 5 business days after depositing the appeal with the Supreme Court of Justice's Secretariat, located in the National District.

Subsequently, the appellant must submit the aforementioned Service of Process within 5 days following its receipt.

As for the respondents, they must submit their defense memorial within 10 business days following the receipt of the aforementioned Service of Process, and it is also possible to attach the Service of Process, along with the appointment of attorneys and their inventory of documents.

If none of the parties submits the Service of Process within 15 days after filing the appeal, the Supreme Court of Justice may declare its expiration.

Moreover, the failure to submit the defense memorial within the aforementioned deadline, along with its inventory of documents and the appointment of attorneys, may result in the pronouncement of default against the respondents and disregard their participation in the proceedings.

## **B) Regarding the Deadlines for Decisions:**

For cases related to incidents, family matters, divorce, annulment of marriage, minors, interim matters, real estate foreclosure, labor, administrative litigation, or tax litigation, the Supreme Court of Justice must issue a decision on the filed cassation appeal within 2 months (from the same date to the same date).

For any other matter not mentioned above, the Supreme Court of Justice has a maximum of 6 months (from the same date to the same date) from the filing or deposit of the appeal to issue a decision.

It should be noted that filing the Cassation Appeal does not limit or suspend the execution of the challenged judgment, except in the following matters and cases:

- 1) Status and capacity of persons.
- 2) Divorce.
- 3) Separation of property.
- 4) Annulment of marriage.
- 5) Mortgage cancellation.
- 6) Declaration of absence.
- 7) Falsification instruction.
- 8) Any other regulated by a special law.

However, upon duly motivated request and through a hearing governed by the principles of contradiction, the president of the chamber can order the suspension of the challenged decision, along with the procedures to be followed for that purpose.

The decision rendered by the Supreme Court of Justice on the cassation appeal in question will be communicated to the parties within 10 business days following its issuance.

It is important to note that the communication of the decision made by the court's Secretariat does not trigger any of the aforementioned deadlines, which are reserved for notifications between the parties and the aforementioned procedures.

#### IV. Structure of the Pleadings.

The First Non-Jurisdictional Full Agreement, issued by the First Chamber of the Supreme Court of Justice on May 30, 2023, describes the structure and order of drafting the pleadings, which we summarize and outline as follows for better understanding:

Header	Identification of the parties in the case
Body	<p><b>First part:</b> preliminary summary of the facts established by the contested sentence.</p> <p><b>Second part:</b> The appellant will have to develop the reasons for the admissibility of the appeal, especially the appeal interest explained above and possible applicable jurisprudence. As for the appealed party, he must present the criteria of inadmissibility or incidents that affect knowledge of the process.</p> <p><b>Third part:</b> The appellant must present in order reasons that promote the appeal under the term "Means of appeal". The respondent must respond in the order, the means developed by the appellants.</p> <p><b>Fourth part:</b> In the event that an incidental appeal exists or is considered necessary, it must be developed at the end of the defense of the means developed.</p>
Petition	Both the appellant and the respondent must present the conclusions on the aspects exposed in the body of the instance, in the same order that they were developed.

It should be noted that the body of the pleading must be supported by relevant laws and precedents that justify or corroborate the arguments presented and the requests made.

Furthermore, the aforementioned First Non-Jurisdictional Full Agreement recommends against using generic citations or ambiguous terms, as well as attempting to reinterpret the facts.

Regarding the justificatory writings for conclusions, they should only be used to expand on the arguments already presented and to respond to incidents and inadmissibility claims raised by the parties.

## **V. Sanctions for Procedural Misconduct.**

As a novel aspect, the new Law 02-23 establishes the possibility of imposing pecuniary sanctions on the appellant or their legal representative if the judges find evidence of procedural misconduct, recklessness, or actions that are clearly abusive or in bad faith.

Such penalties would be independent of any disciplinary action that lawyers may face through the Bar Association, as applicable.

## **VI. Appeals against Judgments issued by the Court of Cassation.**

Decisions issued by the Supreme Court of Justice cannot be challenged by way of opposition and can only be subject to constitutional review, which is governed by the provisions of Articles 53 and 54 of Law 137-11, the Constitutional Court Organic Law.

However, there is the possibility of filing a revision motion, provided it relates to material errors that did not affect the judgment of the Supreme Court of Justice or any legal reasoning underlying the decision.

Moreover, it is exceptionally possible to alter the decision issued on a cassation appeal if the material error pointed out through the revision motion concerns the calculation of time limits or the amount required for admissibility, which were previously explained.

The revision motion must be filed within 3 business days following the notification of the inadmissibility of the cassation appeal, resulting in the suspension of the appealed judgment during the revision process.

## **VII. Application of the new Law 02-23 on Cassation Appeals.**

Finally, Law 02-23 is applicable to all matters and subjects falling within its scope from the moment of its enactment.

The time limits and admissibility requirements established by the new Cassation Law will only apply to appeals filed after the promulgation of said legislation.

As for appeals that were already pending at the time of the publication, they will remain subject to the admissibility criteria of the previous cassation regulations. However, the deadlines for submitting defense writings and their consequences will be derived from the new Law 02-23.

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