

LEY DE CASACION, CODIFICACION
NORMA: Codificación 1 STATUS Vigente

:
PUBLICADO Registro Oficial Suplemento 299 FECHA: 24 de Marzo de 2004

:
H. CONGRESO NACIONAL
LA COMISION DE LEGISLACION Y CODIFICACION

Resuelve:

EXPEDIR LA SIGUIENTE CODIFICACION DE LA LEY DE CASACION

Art. 3.- CAUSALES.- El recurso de casación sólo podrá fundarse en las siguientes causales:

1ra. Aplicación indebida, falta de aplicación o errónea interpretación de normas de derecho, incluyendo los precedents jurisprudenciales obligatorios, en la sentencia o auto, que hayan sido determinantes de su parte dispositiva;

2da. Aplicación indebida, falta de aplicación o errónea interpretación de normas procesales, cuando hayan viciado el proceso de nulidad insanable o provocado indefensión, siempre que hubieren influido en la decisión de la causa y que la respectiva nulidad no hubiere quedado convalidada legalmente;

3ra. Aplicación indebida, falta de aplicación o errónea interpretación de los preceptos jurídicos aplicables a la valoración de la prueba, siempre que hayan conducido a una equivocada aplicación o a la no aplicación de normas de derecho en la sentencia o auto;

4ta. Resolución, en la sentencia o auto, de lo que no fuera materia del litigio u omisión de resolver en ella todos los puntos de la litis; y,

5ta. Cuando la sentencia o auto no contuvieren los requisitos exigidos por la Ley o en su parte dispositiva se adoptan decisiones contradictorias o incompatibles.

Art. 5.- TERMINOS PARA LA INTERPOSICION.- El recurso deberá interponerse dentro del término de cinco días posteriores a la notificación del auto o sentencia o del auto definitivo que niegue o acepte su ampliación o aclaración. Los organismos y entidades del sector público tendrán el término de quince días.

Art. 8 - ADD

Art. 10.- EFECTOS.- Salvo que el proceso verse sobre el estado civil de las personas, o el recurso haya sido interpuesto por los organismos o entidades del sector público, la admision a trámite del recurso no impedirá que la sentencia o auto se cumpla.

Art. 11.- CAUCION.- Salvo las excepciones contenidas en el artículo anterior, quien haya interpuesto recurso de casación podrá solicitar que se suspenda la ejecución de la sentencia o auto recurrido rindiendo caución suficiente sobre los perjuicios estimados que la demora en la ejecución de la sentencia o auto pueda causar a la contraparte.

El monto de la caución será establecido por el juez o el órgano judicial respectivo, en el término máximo de tres días y al momento de expedir el auto por el que concede el recurso de casación o tramita el de hecho; si la caución fuese consignada en el término de tres días posteriores a la notificación de este auto, se dispondrá la suspensión de la

ejecución de la sentencia o auto y en caso contrario se ordenará su ejecución sin perjuicio de tramitarse el recurso.

La Corte Suprema de Justicia dictará un instructivo que deberán seguir los tribunales para la fijación del monto de la caución, en consideración de la materia y del perjuicio por la demora.

**CASSATION LAW, CODIFICATION
RULE: Codification 1 STATUS In force**

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**NATIONAL CONGRESS
THE LEGISLATION AND CODIFICATION COMMISSION
Hereby resolves:**

TO ENACT THE FOLLOWING CODIFICATION OF THE CASSATION LAW

[...]

Art. 3 (ex. 3).- GROUNDS.- A petition for cassation can only be based on the following grounds:

1. Improper application, lack of application, or erroneous interpretation of [substantive] legal rules, including binding precedents, in the judgment or order, that were determining factors in the holding;
2. Improper application, lack of application, or erroneous interpretation of procedural rules, when they have irreparably invalidated the process or caused lack of a proper defense, provided that they influenced the decision in the case and the respective invalidity would not have been legally confirmed;
3. Improper application, lack of application, or erroneous interpretation of the legal provisions applicable to the evaluation of evidence, provided that they led to erroneous application or non-application of rules of law in the judgment or order;
4. Resolution, in the judgment or order, of that which was not a subject of the litigation or failure to resolve in it all the issues in the lawsuit, and;
5. When the judgment or order does not meet the requirements set forth by Law, or contradictory or incompatible decisions are adopted in the holding.

[...]

Article 5. - TIME FOR FILING AN EXTRAORDINARY APPEAL.- The extraordinary appeal shall be filed within five days following notice of the relevant judgment or order, or of the final decision denying or granting a request for clarification or elaboration thereof. Government agencies and entities shall bring an extraordinary appeal within fifteen days."

Article 8. - "...[O]nce an appeal is granted, the same court (Provincial Court) shall order that copies be made as necessary to enforce the judgment or ruling and that the court file be transferred to the Supreme Court of Justice (now, the National Court) and copies be delivered to the competent judge or body for enforcement of the ruling."

Article 10.- EFFECTS - Except in the case of an action concerning the marital status of a person, or where the extraordinary appeal is filed by a government agency or entity, the admission of an extraordinary appeal shall not stay the enforcement of the relevant judgment or order."

Article 11.- BOND - Except as provided in the foregoing Article, the appellant filing an extraordinary appeal may request that the enforcement of the appealed judgment or order be stayed by executing a bond in an amount sufficient to cover the estimated damage that the opposing party may suffer as a result of the delayed enforcement of such order or judgment.

The bond amount shall be determined by the competent judge or court within three days at the time a decision is rendered whereby the extraordinary appeal to a court of cassation is admitted, or an appeal thereto upon dismissal is granted. If the bond is posted within three days following notice of such decision, the enforcement of the relevant judgment or order shall be stayed. Otherwise, they shall be enforced, provided, however, that this shall not preclude the further prosecution of the extraordinary appeal.

The Supreme Court of Justice shall set forth the criteria to be followed by the courts in determining the bond amount, taking into account the matters at issue and the damage that a delay could cause.”

[...]

FINAL PROVISION

LEGAL EFFECT.- This Law and its amendments took effect from their respective publications in the Official Gazette.

I hereby certify: This Codification was prepared by the Legislation and Codification Commission pursuant to the provisions in number 2 of article 139 of the Political Constitution of the Republic, and the requirements of article 160 of the Constitution having been met, it is ordered that it be published in the Official Gazette.

Quito, March 10, 2004

Signed: Diego Jaramillo Cordero, Esq., Secretary of the Legislation and Codification Commission

SOURCES FOR THE CODIFICATION OF THE CASSATION ACT:

- 1.- Political Constitution of the Republic, published in Official Gazette No. 1 of August 11, 1998;
- 2.- Law 27, published in Official Gazette No. 192 of May 18, 1993;
- 3.- Law 93, Art. 23, published in the Supplement to Official Gazette No. 764 of August 22, 1995, and;
- 4.- Unnumbered Law, published in Official Gazette No. 39 of April 8, 1997.