DOI: https://doi.org/10.46991/SL/2026.SP2.037

THE ROLE OF PRECEDENT DECISIONS OF THE COURT OF CASSATION IN SHAPING JUDICIAL GUARANTEES OF THE RIGHT TO LIBERTY: A COMPARATIVE ANALYSIS

Hamlet Asatryan[*]

Abstract. The article analyses precedent decisions of the Court of Cassation of the Republic of Armenia adopted in 2005–2011 that established key judicial guarantees of the right to liberty and the right to a fair trial: recognition of the "criminal" nature of administrative detention, the availability of bail regardless of the gravity of the charge, the standards of due diligence and reasoning in extending pre-trial detention, the requirement to bring a wanted person promptly before a judge, and the "reasonable suspicion" standard. Using comparative and historical legal methods, the article examines the state of judicial practice before and after each decision. It argues that the positions examined followed a common path — from a European Convention standard to a domestic precedent and then to legislative regulation — and that judicial precedent functions in the Armenian legal system as an independent instrument of legal development. Particular emphasis is placed on the role of Davit Avetisyan in shaping this case law.

Keywords - *Court of Cassation, judicial precedent, right to liberty, pre-trial detention, bail, reasonable suspicion, fair trial, European Convention on Human Rights.*

1. Introduction

The exceptional personal contribution of Davit Zakhari Avetisyan — a judge for more than three decades and former President of the Criminal Chamber of the Court of Cassation of the Republic of Armenia — to the formation and consolidation of the judicial system of the Third Republic of Armenia, as well as to the introduction and consistent refinement of precedent-based law in Armenia, can hardly be overestimated. Owing to his direct influence, the precedent decisions of the Court of Cassation have become an integral part of the legal culture of our

[*] **Hamlet Asatryan** - President of the Criminal Chamber of the Court of Cassation of the Republic of Armenia, hamletasatryan@rambler.ru, 0009-0008-9126-2204

The article received 07 September 2026,
reviewed 05 October 2026,
accepted for publication 18 October 2026

This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

© The Author(s) 2026

society, serving as a cornerstone of fundamental human rights and freedoms. During his presidency, the precedent decisions of the Court of Cassation resolved issues of human rights protection of such significance that they considerably enhanced the respect accorded to domestic case law by international bodies.

Thus, by the constitutional amendments of 2005 the constituent power for the first time defined the Court of Cassation as the judicial instance ensuring the uniform application of the law, thereby heralding the emergence of the institution of judicial precedent as a new manifestation of legal culture; by the constitutional amendments of 2015 it was defined as the instance ensuring the uniform application of laws and other normative legal acts and eliminating fundamental violations of human rights and freedoms.[1]

In keeping with the mission enshrined in the Constitution of the Republic of Armenia, the precedent positions of the Court of Cassation have served in judicial practice as legal guidelines and acquired a guiding role in the uniform and consistent application of the law, thereby raising the level of legal certainty and foreseeability and, as a result, contributing to predictable justice.

Within the framework of its mission of developing the law, the precedent-setting decisions of the Court of Cassation have consistently relied on international best practice, on the case law of the European Court of Human Rights (hereinafter also "the European Court"), and on the resolutions and recommendations of the Committee of Ministers of the Council of Europe and of the United Nations, thereby shaping a unified policy in judicial practice.

The significance of the precedent positions of the Court of Cassation can be revealed most fully not only by examining their content as such, but also through a comparative analysis of the judicial practice that existed before and after their formation. Such an approach makes the actual impact of a precedent decision more visible and reveals its role in harmonising judicial practice and ensuring legal certainty and foreseeability.

The aim of this article is to demonstrate, on the example of a number of landmark decisions delivered by the Court of Cassation in 2005–2011, the role of case law in shaping judicial guarantees of the right to liberty and the right to a fair trial. The object of the study is the body of criminal procedural relations connected with restrictions on personal liberty; its subject is the relevant precedent positions of the Court of Cassation, their Convention foundations and their impact on

[1] See Article 92 of the RA Constitution (as amended in 2005) and Article 171(1) of the RA Constitution (as amended in 2015).

judicial practice and legislation. The study employs the comparative legal, historical legal and formal legal methods.

2. Administrative Detention and the Autonomous Interpretation of the Notion of a "Criminal Charge"

Under the legal framework in force until 2005, administrative detention was a recognised and statutorily regulated institution of the legal system of the Republic of Armenia. Although it was classified as an administrative penalty and applied in cases of administrative offences, in substance it entailed a deprivation of personal liberty. The legislature had confined its application to "exceptional cases", set a maximum term of 15 days and reserved the power to impose administrative detention to the courts.

In its decision of 22 July 2005 in the case of Vanik Salartsortsyan,[2] the Court of Cassation addressed the specific features of the application of this institution and, examining them in the light of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also "the European Convention") and the case law of the European Court, held that although the five-day sentence of deprivation of liberty imposed on V. Salartsortsyan by the court had been delivered within the limits of administrative legislation, the nature of the offence committed, together with the nature and severity of the penalty imposed, led to the conclusion that the offence should be classified as a criminal charge.

In reaching that conclusion, the Court of Cassation took into account that Article 182 of the RA Code of Administrative Offences was of general application: the provision was addressed not to a particular group of persons with a special status but to all citizens, it prescribed a certain conduct for everyone, and compliance with it was secured by a punitive sanction. Moreover, persons detained for administrative offences were held in the conditions applicable to arrested persons.

Consequently, the Court of Cassation found a violation of V. Salartsortsyan's right to a "public hearing" under Article 6 § 1 of the European Convention, since the procedural rules governing this type of deprivation of liberty did not provide an opportunity to examine the witnesses testifying against him at the hearing or to call witnesses on his behalf. Guided by the interpretations of the European Court, the Court of Cassation further held that these circumstances also violated V. Salartsortsyan's right guaranteed by Article 6 § 3 (d) of the European Convention.

[2] See the decision of the RA Court of Cassation of 22 July 2005 in the case of Vanik Salartsortsyan.

The exceptional importance of the legal positions expressed in this decision is evidenced by the fact that it effectively put an end to the practice whereby a penalty was in fact imposed on a person under branches of legislation other than criminal law, bypassing both the need for and the real possibility of exercising the guarantees provided by domestic and international norms, as well as fundamental rights, including the right to a fair trial. This landmark decision was followed by the 2005 amendment to the RA Code of Administrative Offences, under which administrative detention as a type of administrative penalty was repealed.

3. Bail Irrespective of the Gravity of the Offence Charged

Under the RA Code of Criminal Procedure adopted on 1 July 1998[3] (hereinafter also "the former RA Code of Criminal Procedure"), the availability of bail was directly linked to the gravity of the offence imputed to the accused: bail could be applied only in respect of offences of minor and medium gravity.

In its decision of 13 July 2007 in the case of Taron Hakobyan,[4] the Court of Cassation addressed the fundamental question of whether persons charged with grave or particularly grave offences could likewise be released from detention on bail.

In particular, the Court of Cassation examined this question in the light of the case law of the European Court in Caballero v. the United Kingdom[5] and S.B.C. v. the United Kingdom,[6] cases factually and legally similar to the one at hand. According to those judgments, where the possibility of considering release on bail is excluded by law from the outset in certain categories of cases, such a restriction on judicial review of pre-trial detention amounts to a violation of Article 5 § 3 of the European Convention. Treating this provision of the European Convention as an integral part of the law of the Republic of Armenia, the Court of Cassation held that the competent courts of the Republic of Armenia are empowered to consider the possibility of releasing the accused from detention on bail, irrespective of the gravity of the offence imputed to him or her.

Following this landmark decision, practice developed in such a way that the gravity of the charge was no longer an obstacle to applying bail to the accused as a

[3] See Article 143(1) of the former RA Code of Criminal Procedure.
[4] See the decision of the RA Court of Cassation of 13 July 2007 in the case of Taron Hakobyan.
[5] See the judgment of the European Court of Human Rights in Caballero v. the United Kingdom of 8 February 2000, application no. 32819/96.
[6] See the judgment of the European Court of Human Rights in S.B.C. v. the United Kingdom of 19 June 2001, application no. 39360/98.

preventive measure, although the corresponding legislative amendment was made only in 2020.

4. The Lawfulness of Extending Detention and the Due Diligence Standard

In another decision, delivered on 31 October 2008 in the case of Aslan Avetisyan,[7] the Court of Cassation, in assessing the lawfulness of an extension of detention, held that where a person is kept in continuous detention but the authority conducting the proceedings fails to carry out the investigation with the necessary speed and diligence, the continued deprivation of liberty cannot be justified indefinitely by the mere existence of grounds for detention.

The Court of Cassation also set a high standard of reasoning for judicial acts, obliging courts to substantiate their conclusions on the existence of grounds for detention with specific factual information. It further held that an extension of detention cannot be automatically justified by the gravity of the offence charged alone.

As a result of these precedent positions, judicial practice evolved so that courts began to assess not only the continued existence of the grounds and conditions for detention, but also the diligence displayed by the investigating authority. The new RA Code of Criminal Procedure adopted in June 2021 elevated to the statutory level the requirement to substantiate the due diligence[8] exercised by the authority conducting the proceedings.

5. The Guarantee of Bringing a Wanted Person Promptly Before a Judge

The legal position expressed by the Court of Cassation in its decision of 26 December 2008 in the case of Tigran Vahradyan[9] concerned the obligation to bring a wanted person promptly before a judge once he or she has been located. The Court of Cassation identified an inconsistency between the rules of criminal procedure and the European Convention and established a law-enforcement mechanism designed to ensure effective judicial review of the lawfulness of the deprivation of liberty of a person who had been wanted and was subsequently located.

Specifically, the former criminal procedure legislation of the Republic of Armenia allowed detention to be ordered as a preventive measure against a wanted

[7] See the decision of the RA Court of Cassation of 31 October 2008 in the case of Aslan Avetisyan.
[8] See the RA Code of Criminal Procedure adopted on 30 June 2021.
[9] See the decision of the RA Court of Cassation of 26 December 2008 in the case of Tigran Vahradyan.

accused in his or her absence, and once located, the person would remain in detention for a lengthy period without being brought before a court.

Such practice was contrary to the requirement of Article 5 § 3 of the European Convention that everyone arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power.

In that case, the Court of Cassation transformed the requirements of Article 5 of the European Convention into a direct judicial guarantee in domestic law. In particular, the requirement of "promptness" was linked, in the domestic context, to the 72-hour maximum period of arrest; consequently, the fact that a person had been on the wanted list could no longer serve as a ground for bypassing the right to judicial review with that person's participation, and an initial detention order made in the person's absence was no longer regarded as final judicial review. Accordingly, once the person had been located, a fresh judicial review with his or her direct participation had to be ensured.

6. The Introduction of the Standard of "Reasonable Suspicion of Having Committed an Offence"

The decision of the Court of Cassation of 24 February 2011 in the case of Vahram Gevorgyan[10] is a further example of the development of procedural law, the significance of which should be viewed from the perspective of shaping the methodology of judicial review of detention. In that decision, the Court of Cassation attached particular importance to the reasonable suspicion that the accused had committed the act imputed to him, holding that it is a primary condition for restricting a person's liberty.

Before that decision, judicial review of detention attached importance solely to the manifestations of the person's possible conduct provided for in Article 135 of the former RA Code of Criminal Procedure, disregarding the importance of the question whether there was any sufficient basis at all for believing that the person concerned was connected with the offence imputed to him or her.

Notably, the concept of "reasonable suspicion of having committed an offence" — a mandatory condition when deciding on detention — was "introduced" into judicial practice by this decision, became a benchmark for the proper exercise of judicial review of detention thereafter, and was elevated to the statutory level only in 2018.

[10] See the decision of the RA Court of Cassation of 24 February 2011 in the case of Vahram Gevorgyan.

7. Conclusion

Thus, a comparative analysis of the precedent decisions of the Court of Cassation examined above shows that all of them followed the same logical path of development: from a standard enshrined in the European Convention and the case law of the European Court to a domestic judicial precedent, and from the latter to legislative regulation. The abolition of administrative detention as a type of administrative penalty (2005), the statutory recognition of the standard of "reasonable suspicion of having committed an offence" (2018), the removal of the gravity-based bar on bail (2020), and the enshrinement of the due diligence requirement for the authority conducting the proceedings in the new RA Code of Criminal Procedure (2021) demonstrate that the precedent positions of the Court of Cassation not only filled legislative gaps and overcame inconsistencies between domestic norms and Convention requirements, but in fact predetermined the subsequent steps of the legislature.

The foregoing leads to the conclusion that judicial precedent in the legal system of the Republic of Armenia has become not only a means of ensuring the uniform application of the law, but also an independent and effective instrument of legal development, through which international human rights standards are directly implemented in domestic judicial practice. The role of Davit Avetisyan in this process has been decisive: the case law formed during his presidency continues to guide judicial practice to this day, serving as a reliable guarantee of the judicial protection of the right to liberty and the right to a fair trial.

Conflict of Interests
The author declares no ethical issues or conflicts of interest in this research.
Ethical Standards
The author affirms this research did not involve human subjects.

References

1. Constitution of the Republic of Armenia (as amended on 27 November 2005).
2. Constitution of the Republic of Armenia (as amended on 6 December 2015).
3. Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.
4. Code of Administrative Offences of the Republic of Armenia, adopted on 6 December 1985.
5. Code of Criminal Procedure of the Republic of Armenia, adopted on 1 July 1998 (no longer in force).
6. Code of Criminal Procedure of the Republic of Armenia, adopted on 30 June 2021.

7. Court of Cassation of the Republic of Armenia, decision of 22 July 2005 in the case of Vanik Salartsortsyan.
8. Court of Cassation of the Republic of Armenia, decision of 13 July 2007 in the case of Taron Hakobyan.
9. Court of Cassation of the Republic of Armenia, decision of 31 October 2008 in the case of Aslan Avetisyan.
10. Court of Cassation of the Republic of Armenia, decision of 26 December 2008 in the case of Tigran Vahradyan.
11. Court of Cassation of the Republic of Armenia, decision of 24 February 2011 in the case of Vahram Gevorgyan.
12. Caballero v. the United Kingdom [GC], no. 32819/96, 8 February 2000.
13. S.B.C. v. the United Kingdom, no. 39360/98, 19 June 2001.