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Supreme Court of Cassation of the Republic of Bulgaria

Date of establishment: 25.11.1878

Address and e-mail of the court:

2 Vitosha Blvd.,

Sofia 1000, Bulgaria

Website:

<http://www.vks.bg/> [1]

Link to the national database of their case law http://www.vks.bg/vks_p10.htm [2]

The Supreme Court of Cassation is the highest judicial authority for criminal proceedings, civil proceedings and commercial disputes. The entire territory of the Republic of Bulgaria comes under its jurisdiction. The seat of the Supreme Court of Cassation is in Sofia.

What does the court decide about

The Supreme Court of Cassation is the court of last instance (cassation instance) for certain judicial decisions and moreover decides on other proceedings specified by the law. If the issue of conformity to the Constitution (constitutionality) arises, the Court is entitled to address the Constitutional court and refer the matter to it.

The principals of procedure:

1. The Supreme Court of Cassation sits in panels of three justices in conformity to the Judiciary Act provisions. The Criminal, Civil and Commercial Colleges hold plenary sessions if they have to hear requests to render interpretation decisions concerning criminal, civil or commercial administration of justice.

The Civil and Commercial Colleges hold joint plenary session if the request for an interpretation decision concerns matters common to both civil and commercial litigation.

Within the proceedings under Chapter 33 of the Criminal Procedure Code (Reopening of criminal proceedings), the Supreme Court of Cassation sits in panels of three judges, whereas in review proceedings for cassation decisions rendered by panels of the Supreme Court of Cassation itself, the Court sits in five-member panel based on Article 354, Para 2, 2 and 5.

The Supreme Court of Cassation engaged in an active interpretative activity aiming at avoiding inconsistent or contradictory case-law following the new Civil Procedure Code entry into force and the amendments to the Criminal Code. Interpretation decisions are rendered by the General Assembly of all justices from each of the Colleges ? Civil,

Commercial and Criminal. When the questions raised concern primarily the civil litigation interpretation decisions shall be rendered by all judges from the Civil and Commercial Colleges. Interpretation decisions are mandatory and binding on all lower instance courts.

The interpretative activity of the Supreme Court of Cassation is conducted by the rules of the Judiciary Act, Chapter IV (Courts), Section ? (Interpretation decisions and interpretative rulings). The request for an interpretation decision or interpretative ruling might be filed by the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, the Prosecutor-General. The Minister of Justice, the Ombudsman or the Chairperson of the Supreme Bar Association.

Legal basis: Article 110, Chapter IV (Courts), Section VIII (Supreme Court of Cassation), Article 125, Chapter IV (Courts), Section ? (Interpretation decisions and interpretative rulings), Article 354, Chapter 22 (Cassation proceedings) Judiciary Act, Chapter IV (Courts), Section VIII (Supreme Court of Cassation).

2. The basic principle of the activity of the Supreme Court of Cassation when hearing cassation appeals in civil proceedings consists in that the Court states its conclusions of law and not the findings of fact.

The Supreme Court of Cassation first renders a ruling on the admissibility of the cassation appeal in chambers in a panel of three judges.

The Supreme Court of Cassation delivers a special ruling to that purpose under article 288 Civil Procedure Code, based on the idea of filtering cassation appeals. The basic rule of this preliminary ?filter? procedure provided for all civil proceedings is that the cassation appeal is found inadmissible and the second-instance decision becomes final and binding if the appealed decision of the lower court is in compliance with the established case-law and there are no new issues raised never brought earlier to the attention of the Supreme Court of Cassation.

The Supreme Court of Cassation may not find ex officio at its sole discretion the grounds for admissibility of the cassation appeal. The appellant submits a cassation appeal that is supposed to offer a detailed reasoned explanation of the grounds for cassation and should be signed by a lawyer with legal qualification.

By Ruling No 4/2009 the Constitutional court of the Republic of Bulgaria admitted that the ?filtering of cassation appeals? activity of the Supreme Court of Cassation is not an interpretation procedure but instead regular third instance activity which is not obligatory to all disputes.

Legal basis:

Article 288, Chapter 22 (Cassation appeal), Civil Procedure Code

3. Commercial disputes are also heard and decided following the procedural rules of the Civil Procedure Code. Precise legal provisions determine whether and why these proceedings might be reverted to the lower courts and under what circumstances the dispute has to be decided on its merits by a panel of the Commercial College within the Supreme Court of Cassation.

4. Criminal proceedings in the Republic of Bulgaria develop on three instances. The third instance court is entrusted with judicial review of the lower instances? decisions. Jurisdiction for criminal proceedings is regulated in the Criminal Procedure Code, Chapter IV (Court), Section II (Jurisdiction).

Cassation review is a process of reviewing judgments of the Court of Appeal or a new verdict rendered by the Regional Court.

Not only does the Supreme Court of Cassation have powers to control and review, but it is also allowed to act as an appellate court. Upon performing its functions, the Supreme Court of Cassation might decide on the merits of a criminal case without being able to put the accused into a worse position. Should the facts and findings on the case

necessarily point at aggravating the position of the accused person, the Supreme Court of Cassation is expected to revert the case to the second-instance court.

In order to prevent the repeated referral of the cases to the lower courts, amendments to the Criminal Procedure Code have been passed and it now provides that the Supreme Court of Cassation is entitled to step in all powers of the second-instance court if the proceedings have reached the Supreme Court of Cassation for a third time. In that case the Supreme Court of Cassation is allowed to collect evidence, make new findings of fact and even worsen the position of the accused. To ensure that the accused enjoys full and unhampered rights of defense in the course of performing those functions, appellate in their essence, the law provides for a possibility to appeal the decision of the three-member panel of the Supreme Court of Cassation before an extended five-member panel.

The number of justices and panels:

The Supreme Court of Cassation has justices and is chaired by a President.

The justices form the Criminal, Civil and Commercial Colleges. Each College is presided by a Chairperson or its deputy, who may chair panels from the Colleges. Colleges have Sections.

The Supreme Court of Cassation has 106 justices.

Legal basis: Article 109, Chapter IV (Courts), Section VIII (Supreme Court of Cassation) Judiciary Act.

How are the justices appointed

Justices, prosecutors, investigating officers, administrative heads or their deputy, with the exception of the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor-General, are appointed, promoted, demoted, transferred or dismissed by way of resolution by the Supreme Judicial Council.

It is within the competence of the Supreme Judicial Council, to propose to the President of the Republic of Bulgaria the appointment or dismissal of the Supreme Court of Cassation, Supreme Administrative Court and the Prosecutor-General.

Legal basis: Article 30. (1) Item 6., Chapter II (Supreme Judicial Council), Section II (Activity and organisation of the Supreme Judicial Council) and Article 160, Chapter X (Status of the justices, prosecutors and investigating officers, Section I (Appointment and dismissal), Judiciary Act.

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[1] <http://www.vks.bg/english/index.html>

[2] http://www.vks.bg/vks_p10.htm