

SCC – interpretative cases in 2021

In order to unify the case law for achievement of predictable and quality justice in 2021, **in the Supreme Court of Cassation 9 interpretative cases were instituted and 10 interpretative decisions/rulings were adopted and announced.**

In 2021, 9 interpretative cases were instituted.

5 interpretative cases were instituted before the General Assembly of the Civil College:

Interpretative case no. 1/2021 (admissibility and consequences of renunciation of inheritance made by a minor child)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Question: “Is it permissible for a minor child to make renunciation of inheritance and does it constitute a renunciation of rights within the meaning of Article 130, paragraph 4 of the Family Code? ”

Interpretative case no. 2/2021 (partition of properties that are not identical in type and purpose)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Question: “Is it necessary for the partition to be carried out in accordance with the procedure of Article 353 of the Civil Procedure Code, the properties allowed for partition to be the same in type and purpose (homogeneous)? ”

Interpretative case no. 3/2021 (possibility for a co-owner to file a negative declaratory claim for ownership of shares of the property, exceeding his own share)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Question: “Can a co-owner file a negative declaratory claim for ownership of shares of the property, exceeding his own share?”

Interpretative case no. 4/2021 (issues related to the application of the Anti-Corruption and Confiscation of Illegally Acquired Property Act)

It was instituted on requests from the Minister of Justice and the Prosecutor General and a proposal of the Chairman of the Commission for Combating Corruption and Confiscation of Illegally Acquired Property for issuance of an interpretative decision on the issues raised.

Questions:

“1. Do the funds from an unidentified legal source received by the inspected person, as well as the amounts of the acquired and subsequently alienated other property, for which no legal source of funds for its acquisition has been established constitute “property” within the meaning of § 1, item 4 of the Additional Provisions of the Anti-Corruption and Confiscation of Illegally Acquired Property Act and do they participate in determining the amount of non-compliance, according to the provision of § 1, item 3 of the Additional Provisions of the Anti-Corruption and Confiscation of Illegally Acquired Property Act, in case they are not available in the person’s patrimony at the end of the inspected period?”

2. Should the defendant be ordered to pay to the State the monetary equivalent of the amounts received from an unidentified legal source, as well as the amounts of other property acquired and subsequently alienated or missing for which no legal source of funds for its acquisition has been established, in case they are not available in the person's patrimony at the end of the inspected period and their conversion into other property has not been established?"

Interpretative case no. 5/2021 (termination of employment of a pedagogical specialist convicted of an intentional crime of a general nature before the adoption of the Preschool and School Education Act)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Question: "Is employment of a pedagogical specialist convicted of an intentional crime of a general nature subject to termination, when this happened before the entry into force of the Preschool and School Education Act (promulgated SG no. 79/13.10.2015, effective from 1 August 2016) and of the provision of Article 330, paragraph 2, item 10 of the Labour Code, or in these cases, according to § 27, paragraph 1 of the TFP of the Preschool and School Education Act, the right of the person to hold the position is assessed according to the effective requirements for holding the respective position in the repealed Public Education Act? "

Four interpretative cases have been instituted before the General Assembly of the Civil and Commercial Colleges:

Interpretative case no. 1/2021 (amount of fair compensation for non-pecuniary damage in case of established complicity on the part of the victim)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Question: "Where in the statement of claim the victim of tort claims compensation for non-pecuniary damages of a certain amount, without acknowledging complicity, is the court obliged to assume that fair compensation for all damages is within the claimed amount and then reduce the compensation according to the established complicity or is it obliged to assume that the fair compensation, after its reduction according to the established complicity, is within the claimed amount?"

Interpretative case 2/2021 (questions relating to enforcement proceedings)

It was instituted at the request of the Chairman of the Supreme Bar Council due to the existing contradictory case law on the issues raised.

Questions:

"1. What is the scope of the judicial review under Article 463 of the Civil Procedure Code regarding the legality of the disputed distribution – is the court limited by the complaints in the appeal or can it ex officio check the legality of the contested allocation?

2. What are the powers of the court after the annulment of the contested allocation before it, prepared by the bailiff, respectively after the annulment of a decision of the district court, which confirms the disputed allocation – to decide the issue on the merits by making a new allocation, or to return the case to the bailiff, respectively to the district court for a new allocation?

3. Do the fees due but not paid in advance by the creditor for the enforcement proceedings enjoy the privilege under Article 136, paragraph 1, item 1 of the Obligations and Contracts Act?

4. Does the fee “household waste” constitute a privileged claim under Article 136, paragraph 1, item 2 of the OCA? ”

Interpretative case no. 3/2021 (question relating to the need to prove lost profits caused by tort)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Question: “Should the lost profits caused by tort be proved with certainty, just as the lost profits caused by the non-performance of a contractual obligation should be proved with certainty?”

Interpretative case no. 4/2021 (issues related to the partial waiver of a claim in cassation proceedings)

It was instituted on the proposals of judicial panels of the SCC due to a contradictory practice of panels of the SCC.

Questions:

„1. Are cassation proceedings that remain pending after a partial waiver under Article 233 of the Civil Procedure Code of the disputed right before the Supreme Court of Cassation and, as a result of this procedural action, the price of the filed claim is below the threshold established in Article 280, paragraph 3, item 1 of the CPC admissible?

2. What are the legal consequences in case of partial waiver of a claim filed under Article 233 of the CPC in the cassation proceedings, regarding the part of the disputed right, for the consideration of which the court declines jurisdiction, and the rest of the disputed right, in respect of which jurisdiction over the dispute is not declined?”

In 2021, 10 interpretative decisions/rulings were adopted and announced by the SCC.

The General Assembly of the Civil College has issued 3 interpretative decisions:

Interpretative decision no. 4/2017 of 1 February 2021 in Interpretative case no. 4/2017 (termination of an employment contract by the employer with a notice)

It was instituted on the proposals of judicial panels of the SCC due to a contradictory practice of panels of the SCC.

Operative part:

1a. There are no grounds under Article 328, paragraph 1, item 6 of the Labour Code for termination of the employment contract, if at its conclusion the employee does not meet the requirements for education or professional qualification introduced by the employer for the performed work.

1b. There are grounds for termination of the employment contract under Article 328, paragraph 1, item 6 of the Labour Code when at its conclusion the employee does not meet the requirements for education or professional qualification for the performed work introduced by a legal act.

2. A ground for termination of the employment contract under Article 328, paragraph 1, item 11 of the Labour Code is the change of all requirements for holding the position, except those for education and professional qualification.

3. In the order termination of the employment contract under Article 328, paragraph 1, item 5 of the Labour Code, the employer is obliged to specify the missing qualities of the employee for effective performance of the work by listing them or by specifying the manner in which the employee handles the assigned work.

Interpretative decision no. 5/2019 of 26 October 2021 in Interpretative case no. 5/2019 (closure of a part of an enterprise as a ground for termination of employment)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Operative part:

Closure of part of the enterprise within the meaning of Article 328, paragraph 1, item 2, item 1 of the Labour Code exists when a certain organizationally defined unit has been removed from the structure of the enterprise and the activity of this unit has been terminated.

In the internal reorganization, structural changes are made, in which some units are changed through mergers, acquisitions, separations, divisions, etc., but their activity is preserved.

Reduction in the staff within the meaning of Article 328, paragraph 1, item 2, item 2 of the Labour Code exists when all full-time posts for a certain position are deleted or part of them is reduced.

The internal reorganization is not a ground for termination of employment contract, therefore there is no ground for selection.

Upon closure of part of the enterprise, the employer has the right, but not the obligation to select, i.e. its execution is at his discretion. The employer may exercise the right of selection when in the remaining organizationally defined units of the enterprise in the same settlement there are employees in positions with identical or insignificantly different labour functions.

Interpretative decision no. 3/2019 of 2 December 2021 in Interpretative case no. 3/2019 (question concerning the start of the period for appearing for work upon reinstatement after unlawful dismissal)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Operative part:

The two-week term for appearing for work under Article 345, paragraph 1 of the Labour Code shall start only upon receipt by the employee of the special notice for reinstatement to work, sent by the court of first instance hearing the case. If no notice has been received, the period shall start from the day on which, by appearing at the enterprise or otherwise, the employee expresses to the employer his/her wish to return to the job to which he/she has been reinstated.

The General Assembly of the Civil and Commercial Colleges issued 3 interpretative decisions:

Interpretative decision no. 2/2019 of 26 March 2021 in Interpretative case no. 2/2019 (claim under Article 135 of the OCA, filed by assignee)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Operative part:

The assignee has the capacity to file a claim under Article 135, paragraph 1 of the OCA, if the damaging transaction or action has been performed after the receivable of the original creditor – the assignor has arisen, but before the conclusion of the contract for transfer of the receivable.

Interpretative decision no. 3/2018 of 17 March 2021 in Interpretative case no. 3/2018 (re-registering of a mortgage that has not been renewed within ten years of its establishment)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Operative part:

A mortgage can be re-registered according to Article 172, paragraph 2 of the OCA, if the ten-year term of the registration has expired and it has already been deleted pursuant to the procedure of Article 22 of the Registry Regulations, but this registration is unopposable to the third party who acquired ownership of the property and registered his deed before the new registration of the mortgage, as well as to his private successors, although they acquired ownership of the property after the new registration of the mortgage.

Interpretative decision no. 1/2019 of 2 July 2021 in Interpretative case no. 1/2019 (cancellation of a contract for transfer of real rights over another's real estate)

It was instituted on the proposal of a panel of judges of the SCC due to a contradictory practice of panels of the SCC.

Operative part:

The contract for transfer of real rights over another's real estate shall not be terminated by law by virtue of an effective decision for judicial removal against the acquirer of the property and a claim under Article 87, paragraph 3 of the OCA is admissible.

The General Assembly of the Criminal College has issued 2 interpretative decisions/rulings:

Interpretative decision no. 1 of 12 March 2021 in Interpretative case no. 1/2019 (offering and giving bribes)

It was instituted at the request of the chairman of the SCC.

Operative part:

1. The difference in the forms of the executive act “offer” and “give” in the constituent elements of the crimes under Article 304, paragraph 1 of the Criminal Code and Article 304a of the Criminal Code consists in the objective behaviour of the perpetrator aimed at the implementation of the motivational impact on the official and the manner of its implementation.

In the form of an executive act “offer” of the crime under Article 304, paragraph 1 and Article 304a of the Criminal Code, the perpetrator expresses unambiguously, unequivocally, through an offer, an intention to favour an official in order to perform or not to perform an act of office or for the fact that he or she has performed or has not

performed such an action, and the offer should be accepted by the official for whom it is intended.

In the form of the executive act of the crime under Article 304, paragraph 1 and Article 304a of the Criminal Code “give”, the perpetrator is active in terminating his/her own de facto power over the benefit, and in cases of intangible benefits – by providing the official and/or third party with it, in such a way that the official or the third party can freely exercise factual and/or legal action against it. In this form of executive act, the perpetrator transfers, provides, presents, sends the gift/benefit /or creates an advantage, and through these actions the perpetrator achieves an objective factual or legal change in the original position of the subject of bribery in favour of the official for whom the benefit is intended.

2. The active bribery under Article 304, paragraph 1 of the Criminal Code and Article 304a of the Criminal Code in the form of an executive act “give a gift or any benefit” (bribery) to an official is completed by interrupting the actual power of the perpetrator over the benefit and submitting it to the official and/or other person in a way which allows him/her to express freely his/her attitude towards it – by accepting it, respectively by refusing to accept it.

3. It declares invalid proposition 3 and proposition 4 of item 2 of Decree no. 8 of 30 November 1981 in criminal case no. 10/81 of the Supreme Court Plenum.

Ruling of 15 April 2021 in Interpretative Case no. 2/2020 (disclosure of investigation materials in the pre-trial proceedings)

It was instituted on the proposal of the chairman of the Supreme Bar Council.

Operative part:

It rejects as inadmissible the request of the chairman of the Supreme Bar Council for adoption of an interpretative decision on the question and all three sub-questions to it:

1. In what cases and under what conditions the prosecutor on the grounds of Article 198, paragraph 1 of the CPC may allow disclosure of investigation materials?

1.1. Is disclosure of materials in support of the prosecution’s standpoint compatible with the presumption of innocence when it is not necessary to protect national security or to conduct an effective investigation by seeking public assistance?

1.2. Is it permissible to disclose investigation materials when the disclosure itself constitutes a crime?

1.3. Is it permissible to disclose materials that relate to a third party outside the accused persons in the pre-trial proceedings?

A draft of the reasons for the decision in Interpretative Case no. 1/2020 has been prepared and it will be presented for discussion again in early 2022.

One ruling was issued in an interpretative case of the General Assembly of judges of the Civil and Commercial Colleges of the SCC and the First and Second Colleges of the SAC:

Ruling no. 1 of 25 March 2021 in Interpretative Case no. 2/2015 (procedure and competent court for consideration of a claim for liability of the state for damage caused by violation of European Union law)

It was instituted on the proposal of the chairman of the Supreme Bar Council and on the proposal of the judges of the Civil and Commercial Colleges of the Supreme Court of Cassation and the First and Second Colleges of the Supreme Administrative Court.

Operative part:

It rejects the request of the chairman of the Supreme Bar Council for adoption of a joint interpretative decree by the General Assembly of judges of the Civil and Commercial Colleges of the Supreme Court of Cassation and the First and Second Colleges of the Supreme Administrative Court on the issue: Pursuant to which procedure and by which court should the claim for liability of the state for damage caused by violation of European Union law be considered?"

One ruling was issued in an interpretative case of the General Assembly of judges of the Civil College of the SCC and the First and Second Colleges of the SAC:

Ruling no. 2 of 20 April 2021 in Interpretative Case no. 1/2019 (payability of legal adviser's fees in some hypotheses of the State and Municipal Liability for Damage Act)

It was instituted on the proposal of the Prosecutor General.

Operative part:

It rejects the request of the Prosecutor General of the Republic of Bulgaria for adoption of a joint interpretative decree by the General Assembly of judges of the Civil College of the Supreme Court of Cassation and the First and Second Colleges of the Supreme Administrative Court on the following issue: In the hypotheses of Article 10, paragraph 2, respectively of Article 10, paragraph 3 of the SMLDA, does the plaintiff owe costs for legal adviser's fees, when the legal entity which is the respondent in the claim according to Article 205 of the Administrative Procedure Code is represented in the proceedings by a legal adviser? ”.

SCC - interpretative cases in 2022

In 2022, a total of 4 interpretative cases were instituted and decisions were issued in 5 interpretative cases in the SCC.

In 2022, a total of 4 interpretative cases were instituted in the SCC.

One interpretative case was instituted before the General Assembly of the Civil College:

Interpretative case no. 1/2022

It was instituted on the proposal of a member of the Fourth Civil Division.

Question: “In case of a claim for compensation of non-pecuniary damage from a violated right under Article 6, § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms for consideration and resolution within a reasonable time in a completed case and other non-pecuniary damage which are compensated under the State and Municipal Liability for Damage Act, is the court obliged to determine the payable compensation globally?”

One interpretative case was instituted before the General Assembly of the Commercial College:

Interpretative case no. 1/2022

It was instituted on the signal of the Inspectorate of the Supreme Judicial Council.

Question: “What circumstances should the court investigate and take into account when considering the requests in the proceedings under Article 536, paragraph 1 of the Civil Procedure Code in conjunction of Article 19 of the Commercial Register and the Register of Non-Profit Legal Entities Act? “

Two interpretative cases were instituted before the General Assembly of the Civil and Commercial Colleges:

Interpretative case no. 1/2022

It was instituted on the proposal of a member of the Third Civil Division.

Question: “What is the legal ground for a claim filed against the State for payment of an amount – a paid (withheld and paid into the state budget) fee by virtue of Article 35a of the Energy from Renewable Sources Act – in view of declaring the provision unconstitutional and non-fulfillment of the obligation of the National Assembly under Article 22, paragraph 4 of the Constitutional Court Act to remove the adverse legal consequences arising from the application of this provision – tort or unjust enrichment?”

Interpretative case no. 2/2022

It was instituted on the proposal of the deputy chairmen of the Supreme Court of Cassation and heads of the Commercial College and the Civil College.

Question: “Is a suspension ruling issued by a court of first instance or an appellate court subject to appeal, due to a reference for a preliminary ruling from another court made under Article 628 et seq. of the Civil Procedure Code?”

In 2022, the SCC issued decisions in 5 interpretative cases.

The General Assembly of the Criminal College issued 1 decision:

Interpretative decision no. 1 of 24 January 2022 in Interpretative Case no. 1/2018

It was instituted on the proposal of the deputy chairman of the Supreme Court of Cassation and head of the Criminal College.

Operative part:

42 decrees of the Supreme Court Plenum from the period 1953 – 1994 are revised (declared invalid in whole or in part).

The General Assembly of the Civil College issued 2 decisions.

Interpretative decision no. 6/2017 of 11 February 2002 in Interpretative Case no. 6/2017

It was initiated on the proposal of a member of the Fourth Civil Division.

Operative part:

The claim for compensation of a serviceman who has worked more than the normatively defined work when by twenty-four hour shifts, uncompensated with rest, arises from the date of termination of the service relationship. From that time it shall become due and the serviceman can exercise his right to sue. From the same time the three-year limitation period

under Article 358, paragraph 1, item 3 in conjunction with paragraph 2, item 2 of the Labour Code shall start.

Interpretative decision no. 3/2020 of 5 January 2022 in Interpretative Case no. 3/2020

It was instituted on the proposal of a member of the First Civil Division.

Operative part:

In case of a claim under Article 108 of the Property Act (PA), filed by a co-owner against another co-owner for a share of a co-owned real estate, the court may grant the request to transfer possession of the claimed share when the respondent has established de facto control over the property exceeding his rights and this violated the claimant's possession.

The General Assembly of the Civil and Commercial Colleges issued 2 decisions:

Interpretative decision no. 3/2019 of 23 February 2002 in Interpretative Case no. 3/2019

It was instituted on the proposal of a member of the Fourth Civil Division.

Operative part:

The subject matter of the case is legal relations arising from a contract under Article 258 of the Obligations and Contracts Act for performance of construction works, concluded between a natural person and a merchant in relation to his occupation, shall be a commercial one. Prior to the adoption of the Act amending the Civil Procedure Code (SG, no. 100/2019) the threshold for access to cassation appeal under Article 280, paragraph 3, item 1 of the Civil Procedure Code of the appellate decision shall be the same as in commercial cases.

After the amendment of Article 113 of the Civil Procedure Code (SG, no. 100/2019) a case whose subject matter is legal relations arising from a contract under Article 258 of the Obligations and Contracts Act for performance of construction works, concluded between a natural person having the status of consumer within the meaning of § 13, item 1 of the Additional Provisions of the Consumer Protection Act, and a merchant in relation to his occupation, shall be considered a civil one under the general claim procedure and the threshold for access to cassation appeal of the appellate decision shall be the same as in civil cases.

Interpretative decision no. 5/2019 of 21 January 2022 in Interpretative Case no. 5/2019

It is instituted on the proposal of a member of the Second Commercial Division.

Operative part:

In case of agreed repayment of the main obligation in separate repayment installments with different maturities, the six-month term under Article 147, paragraph 1 of the Obligations and Contracts Act shall start from the occurrence of the due date of the entire debt, including in the case of pre-term due date.

Criminal College of the SCC

Guaranteeing the constitutional right of citizens to a fair trial requires unification of case law to achieve predictable and quality justice. The necessary result is achieved not only by adopting interpretative decisions, but also by studying the contradictory case law of the courts and adopting decisions of the general assemblies of the relevant panels of the SCC on the basis of its analysis.

In the second half of 2021, the General Assembly of the Criminal College of the SCC undertook such studies on the following issues:

- found contradictory case law of the courts of appeal on issues related to the crime under Article 172b, paragraph 1 of the Criminal Code. At the suggestion of the judges from the Nessebar Regional Court, the case law of the courts of appeal was summarized and based on its analysis, an opinion of the GACrC was adopted, which contains recommendations on the proper application of this text of the Criminal Code and the conclusion that there is no need for interpretation from the SCC;

- study of the issues related to the effect of the CJEU decisions on references for a preliminary ruling over time. An opinion of the GACrC of the SCC was adopted;

- study of the practice of exercising incidental (indirect) judicial control over the legality of administrative acts in criminal proceedings. The provision of opinions and summaries of the practice continues, and an opinion of the GACrC is expected in the first half of 2022;

- study of contradictory practice in the application of the provisions of the CPC and the JSA concerning the implementation of procedural actions in the electronic environment. Due to an initiative taken by the Ministry of Justice to draft an Act amending the JSA and create a working group with the participation of representatives of the SCC, the summary of opinions and analysis of the practice have not been completed. In the absence of legislative change, the opinion of the GACrC is expected in the first half of 2022.