

Interpretative decision of the Supreme Court of Cassation on matters of annulment of a judgement which has come into force

On 31.07.2017 the General Assembly of the Civil College and the Commercial College of the Supreme Court of Cassation of the Republic of Bulgaria delivered Interpretative decision No. 7/2014 on interpretative case No. 7/2014 whereby it addressed important matters related to the annulment of a judgement pursuant to Chapter Twenty Four of the Code of Civil Procedure.

According to this decision the interpretative decisions, which provide mandatory interpretation of a law applicable to the case, do not constitute grounds for annulment of judgements which have come into force. The registration of an application for annulment of a judgement which has come into force is not a requirement for regularity. In the event where the application has not been registered, the court considering the pending case should issue instructions to the party to register it, and if the party fails to follow the instructions the application should be referred back.

The proceedings on annulment of judgements which have come into force do not apply to judgements of the district court, delivered on appeal against the actions of a private bailiff, or to judgements which have come into force when delivered in proceedings on contested judicial administration.

The Court held that identity in the subject of judgements which have come into force, when considered as grounds for annulment, existed not only under circumstances of complete objective and subjective identity in terms of subject and parties to the cases, but also where different solutions have been provided for points of law comprised in the subject of the case that has been given the force of *res judicata*.

The obstructions to further progress on the case, except for the ruling on discontinuance of the case due to withdrawal of the action, are not subject to annulment pursuant to the procedure of Article 307 of the Code of Civil Procedure.

Under circumstances where the appeal in cassation has been referred back, the starting point of the period for lodging an application for annulment of a judgement on appeal which has come into force is the time when the party has come to knowledge of the judgement on appeal or the date of coming into force of the judgement on appeal, if the awareness thereof preceded that, in cases of late appeal in cassation. Under any other circumstances the court

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held that the starting point of the period was the date of announcement of the act of confirmation for the ruling or the order for referral back of the appeal in cassation.

An application for annulment of a judgement issued in compliance with the applicable Code of Civil Procedure (repealed), which has been lodged in compliance with the new applicable Code of Civil Procedure, is inadmissible, if prior to the coming into force of the new Code of Civil Procedure the one year period under 232, paragraph 1 of the Code of Civil Procedure (repealed) has expired. Also inadmissible is the application for annulment lodged after the expiry of the period under Article 307 of the Code of Civil Procedure, as well as the application which did not comprise appropriately and specifically indicated grounds for annulment.

The annulment proceedings allow for collection of evidence to prove infringement of the right of the applicant to take part in the process.

The order of the court of first instance for referral back of the application for annulment is subject to superior instance control by the Supreme Court of Cassation.

In the event of annulment of a judgement which has come into force, due to availability of new circumstances or of new written evidence of substantial importance to the case, after annulment of the judgement the case is referred back for a fresh examination by the court of appeal. In the event of annulment of a judgement due to a false document, statement of witness or findings of an expert, or to a criminal act of the party or a representative thereof, of a member of the chamber of the court or of a server in connection with the judgement on the case, the case is referred back for fresh examination by the court of appeal. An exception to this assumption refers to cases where the ascertained criminal act has resulted in nullity or inadmissibility of the judgement of the first instance. In such cases after the annulment the case is referred back to the court of first instance.

After annulment the case is referred back to the court of appeal also when the annulled judgement has been based on an order of another court or of another government body, which has subsequently been annulled.

After annulment of a decision of the Supreme Court of Cassation which has come into force,

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and which has been issued pursuant to Article 295, paragraph 2 of the Code of Civil Procedure, and which has resolved the dispute on the substance of the case, the case is referred back for a fresh examination by another chamber of the Supreme Court of Cassation comprising three members.