

The Supreme Court, Its Role and Organisation

The Supreme Court is the highest appellate court in the state¹. It functions primarily as a court of cassation². It is a court of appellate jurisdiction in criminal and civil cases, in commercial lawsuits and in labour and social security disputes. It is the court of the third instance in almost all these cases within its jurisdiction. The grounds of appeal to the Supreme Court (defined as extraordinary legal remedies in our procedural laws) are therefore limited to issues of substantive law and to the most severe breaches of procedure.

After the Law on Administrative Courts has been passed, the Supreme Court has become the court of the second instance in most cases of administrative review.

The Supreme Court is not authorised to determine procedural norms for itself and for courts in general. It is only authorised to give prior opinion to the Minister of Justice, regarding the Court Procedural Code³ - which determines such matters as the internal organisation of courts; the case flow management; detailed rules on the assignment of cases to individual judges; the limited functioning of courts during the court recess (15 July to 15 August); the business of court administration and technical work of courts etc. It is also authorised to determine the details of those procedural norms, set by the Law on Courts, which regulate the functioning of the Supreme Court "en banc" (in session attended by all the justices composing it⁴).

The Supreme Court does not decide whether to review a case or not. All the appeals to the Supreme Court can be made as of right and no leave to appeal is needed. Apart from administering justice (reviewing cases in its jurisdiction), the Supreme Court also determines most cases of disputes over jurisdiction between lower courts, grants the transfer of jurisdiction to another court in cases provided by law, and keeps records of the judicial practice of courts. The Supreme Court takes active part in the training of judges, mainly during their service.

The judges of the Supreme Court preside the State Election Commission. They also preside and sit on the following disciplinary boards:

- the State Prosecutor Office's disciplinary board of the second instance and, in disciplinary cases against high ranking State Prosecutors, of the first instance as well;
- the Bar Association's disciplinary board of the first instance (the president and one member of the board) and of the second instance (this board is constituted of five Judges of the Supreme Court);
- the Notaries Public Association's disciplinary boards of the first and the second instance (in the same way as with the Bar Association's boards).

¹ Art. 127 of the Constitution of the Republic of Slovenia: "The Supreme Court shall be the highest court in the State. It shall be a court of appellate jurisdiction and shall deal with such other matters as are laid down by statute."

² In the sense of its prerogatives, and not in the sense of the organisation of the judiciary in the Republic of Slovenia.

³ Official Gazette of the Republic of Slovenia, Nr. 17/95

⁴ Court in bank (en banc), Black's Law Dictionary, 1990, p. 353

According to the Constitution (q.v. footnote 1) the Supreme Court is the highest court in the state. There is also the Constitutional Court of the Republic of Slovenia. It has been defined (in the Law on the Constitutional Court) as "the highest body of the judicial power for the protection of constitutionality, legality, human rights and fundamental freedoms"⁵. Apart from this - and the regulation of the effect of the decisions of the Constitutional Court in cases of constitutional complaint⁶ - the relations between the Supreme Court and the Constitutional Court are not regulated by statutes.

The Supreme Court is not empowered to decide upon matters relating to the conformity of statutes, regulations and by-laws with the constitution and with international law, and similar matters. These matters, as well as matters relating to complaints of breaching of the constitution involving individual acts infringing human rights and fundamental freedoms (constitutional complaints), belong within the jurisdiction of the Constitutional Court.

The Supreme Court can exercise inside inspection of lower instance courts' activities which are not related to the administration of justice. Thus, the Supreme Court can demand to be given insight into the work of a lower court by way of examining cases already closed, chosen at random (the object of this examination being a later exchange of experiences with the judges of the lower court, planned as a kind of collegial help and part of in-service training) - and not of cases still under procedure. The President of the Supreme Court can also - upon the complaint of a party in a case not yet closed (the complaint being that the case is not being adjudicated within a reasonable time) - ask the president of a High Court (court of the second instance) to inform him/her of the reasons for the delay in the individual case.

The independence of the Supreme Court is safeguarded in the same way as that of the lower courts. The way the President and Vice-President of the Supreme Court are appointed (q.v. 7), represents an additional safeguard of the independence of the Supreme Court from the executive power (the Ministry of Justice, i.e. the government). The independence of Judges of the Supreme Court is safeguarded in the same way as that of other judges, with only one additional safeguard: the disciplinary measure of transfer (to a court one level lower or a court of equal status in a different town) may not be taken against a Judge of the Supreme Court⁷.

The affairs of the administration of courts⁸ are handled by their presidents. A court may have a secretary charged with the execution of the affairs of court administration. Therefore, the Supreme Court is administered by its President - and the Supreme Court is not the administrator of the whole court system. The independence of the courts, as parts of the judiciary, is safeguarded by the limited prerogatives the Ministry of Justice has in the administration of the judiciary⁹.

⁵ Para. 1, Art. 1 of the Law on the Constitutional Court (Official Gazette of the Republic of Slovenia, Nr. 15/94)

⁶ Art. 112 of the Law on Courts: "If pursuant to a constitutional complaint a final judgment or another decision of a court has been modified by a decision of the Constitutional Court of the Republic of Slovenia, the court shall enforce it in accordance with the decision of the Constitutional Court."

⁷ Para. 3, Art. 84 of the Law on Judicial Service (Official Gazette of the Republic of Slovenia, Nr. 19/94)

⁸ Para. 1, Art. 60 of the Law on Courts: "The affairs of the administration of the court include the decision-making and other responsibilities by which conditions are provided for the regular exercising of judicial authority in accordance with law, the Court Procedural Code and other regulations."

⁹ Art. 74 of the Law on Courts: "The administration of the judiciary provides general conditions for the successful exercising of the judicial authority, including in particular the preparation of laws and other regulations in the field of organisation and operation of the courts, care for the education and in-service training of personnel, the provision of personnel, material, professional and physical conditions, the provision of international legal aid, the enforcement of penal sanctions, statistical and other research into the operation of the courts, and other administrative tasks provided by law."

Safeguarding Uniformity of Judicial Practice

Safeguarding uniformity of judicial practice is one of the important tasks of the Supreme Court. Most important in this context, the Supreme Court passes "en banc":

- memorandum opinions on questions of judicial practice (i.e. it accepts and gives a generalized significance to interpretations of law given in the statements of reasons of a judgment, or another decision, of the Supreme Court or a court of the second or the first instance);
- memorandum opinions of principle (i.e. it accepts interpretations of law, important in view of the uniformity of judicial practice, proposed by one of the Divisions of the Supreme Court of its own accord or upon the proposal of a lower court).

According to the law¹⁰, all these interpretations of law are binding on all the panels of the Supreme Court - and only on them, while there is no legal obligation for the lower courts to respect them. These memorandum opinions, however, are usually accepted as correct interpretations of law by all the lower courts as well.

All the decisions of the Supreme Court are accessible to all the courts and to the professional public through a computer network. The Supreme Court draws attention of the lower courts to those of its decisions that bring new aspects to the interpretations of law or might be of general interest in another way, by publishing excerpts from the statements of reasons for these decisions in the "Judge's Informer" (a bulletin of internal character, distributed among judges only). The memorandum opinions (q.v. 16) passed by the Supreme Court "en banc" twice a year, are published in a semi-annual periodical "Memorandum Opinions", distributed (on a commercial basis, the price covering costs only) to all the courts (each judge receiving a copy as a rule), to other institutions and members thereof (e.g. the Public Prosecutor's Offices, the Bar Association and those members of the Bar who wish to receive it) and other interested parties, mainly members of the legal profession that subscribe to it.

¹⁰ Para. 2, Art. 110 of the Law on Courts