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Struttura di formazione decentrata della Corte di cassazione

Questionnaire on the *admissibility* of criminal appeals

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Questionnaire sur la *recevabilité* des recours en matière pénale

Italian Supreme Court of cassation

International Relations Office and *Judicial Training Unit of the National School for the Judiciary at the Italian Supreme Court*

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Rome 2019

Questionnaire on the admissibility of criminal appeals

The Judicial Training Unit of the National School for the Judiciary at the Italian Supreme Court has organized a seminar on the admissibility of criminal appeals in the last quarter of 2019.

To this purpose, in order to address the topic in the broadest way, including its supranational dimension, the First President of the Italian Supreme Court of cassation has sent to the Presidents of the Supreme Courts Members of the Network of the Supreme Judicial Courts of the European Union the following three short questions about the admissibility of criminal appeals as considered in each legal system:

Questions:

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

This report, realized thanks to the collaboration of the International Relations Office at the Court of Cassation, contains the replies received.

Questionnaire sur la recevabilité des recours en matière pénale

L'Unité de formation judiciaire de l'École supérieure de la magistrature de la Cour suprême de cassation italienne organise un séminaire judiciaire sur la recevabilité des recours en matière pénale, qui doit se tenir au cours du dernier trimestre de 2019.

A cet égard, afin d'aborder le sujet de la manière la plus large possible, y compris sa dimension supranationale, le Premier Président de la Cour suprême de cassation italienne a adressé aux Présidents des Cours suprêmes Membres du Réseau des Cours suprêmes judiciaires de l'Union européenne les trois brèves questions suivantes sur la recevabilité des procédures pénales pénale tels qu'ils sont examinés dans chaque système juridique:

Questions:

1 - En matière pénale, le recours devant la Cour suprême est-il recevable contre tous les arrêts et jugements relatifs à la liberté individuelle? Quels sont les moyens selon lesquels un recours peut être considéré recevable? En particulier, un recours est-il également recevable au motif d'un moyen erronée ou imparfait ou absent et, dans l'affirmative, dans quelles limites? Un contrôle préalable de la recevabilité du recours est-il prévu?

2 - Le jugement par la Cour suprême a-t-il le caractère d'un contrôle de dernier ressort sur le fond ou d'un contrôle de droit pur? Comment la Cour établit-elle le principe de droit? Dans les cas les plus pertinents ou en cas de conflit, est-il prévu qu'une décision soit prise dans les assemblées plénières ou en chambres mixtes?

3 - Quels sont les pouvoirs de décision de la Cour suprême? En particulier, la Cour suprême peut-elle recalculer la peine à appliquer et, le cas échéant, dans quelle mesure?

Le présent rapport, réalisé grâce à la collaboration du Bureau des relations internationales de la Cour de cassation, contient les réponses reçues.

Albania - *Supreme Court*

General information on the Albanian Supreme Court

Article 141 of the Albanian Constitution rules as follow:

"1. The Supreme Court shall examine issues concerning the meaning and application of the law in order to ensure the unification or development of case law, in accordance with the law.

2. For the amendment of the case law, the Supreme Court shall review in the Joint Chambers specific judicial issues decided by the chambers, in accordance with the law."

The Supreme Court is organized in the Civil Chamber, Criminal Chamber and the Administrative Chamber. The Chairperson of the Chamber is elected by the members of the Chamber by a simple majority of all members for a term of one year with the right for re-election.

The Civil Chamber considers recourses against the decisions of courts of general jurisdiction on matters of commercial, civil and family law, as well as other matters assigned to its competence by law. It adjudicates in adjudication panels composed of three judges.

The Criminal Chamber considers recourses against the decisions of courts of general jurisdiction and the Anti-Corruption and Organized Crime Specialized Courts in criminal matters, as well as other matters assigned to its competence by law. It adjudicates in panels composed of three judges. Criminal cases tried by the Anti-Corruption and Organized Crime Specialized Courts are tried by an adjudication panel composed of five judges.

The Administrative Chamber considers recourses against the decisions of administrative courts. Panels of the Administrative Chamber are composed of three judges and, for the cases adjudicating the lawfulness of sublegal normative acts, the adjudication panels consist of five judges.

The adjudication panel is chaired by the chairperson of the court, and in his absence by the chairperson of the chamber. In the absence of both, it is chaired by the judge reporter.

The Supreme Court adjudicates in Joint Chambers the civil, criminal or administrative cases, which, by decision of one of its adjudication panels or of the Chairperson of the High Court, are put forward for review in order to change the case law. Joint Chambers adjudicate cases where the same legal question was not interpreted in a uniform manner by different chambers of the Supreme Court, or where there is a risk of a non-uniform interpretation among different chambers of the Supreme Court.

The Albanian Supreme Court is responsible for reviewing only and exclusively on the points of law judgments, decisions and rulings of lower court, including courts of general and special competence. The primary constitutional mission of the Supreme Court

is to ensure the uniformity of the judicial practice by mean of precedents formulated in cassation rulings or unifying decisions.

In three types of procedural laws - civil, penal and administrative – are prescribed the causes which can activate the jurisdiction of the Supreme Court, which mean in other words the reasons to lodge a recourse. The recourse reasons are:

a) The incorrect implementation of material or procedural law, of essential importance for the unification, certainty and/or development of case law;

b) when the appealed decision is different from the case law consolidated by the Civil Chamber or the unified case law of the Joint Chambers of the High Court;

c) if there are serious violations of procedural norms, resulting in the invalidation of the decision or of the judgment procedure.

A Legal Service Unit functions at the High Court. It carries out advisory and supporting activity in the decision-making process of the Supreme Court, including:

a) Analyzing the relevant case law on the interpretation of provisions applicable in pending cases;

b) Analyzing the case and summarizing the procedure;

c) Performing other tasks for the processing of the case as requested by the judge.

The Legal Service Unit is established under the authority of the Chairperson of the Court, who for each case shall assign the legal advisor by taking into account their professional experience and the specialization and by ensuring an equal workload among them.

The Legal Service Unit consists of legal advisors, whereby more than half of the total number is composed from assistant magistrates who are seconded in accordance with the procedures set out in the Law no. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania". The non-magistrate legal advisors are appointed by the High Judicial Council as regulated by provisions of this Law.

The Documentation Center ensures the immediate publication of decisions of the High Court in compliance with the provisions on personal data protection; carries out the analysis and evaluation of decisions of the Supreme Court and provide the publication of extracts of main decisions in addition to the publication of the full decision; follows and studies the case law of other courts and international courts, and provide judges, assistant magistrates and non-magistrate legal advisors with information on the interpretation of the law by courts.

Decisions of the adjudication panels of the Supreme Court, along with the dissenting opinion, are published in the Periodical Bulletin of the Court in accordance with the Law "On the Center for Official Publications". On the other hand, decisions of the Supreme Court for the case law unification or development are published in the next issue of the Official Journal of the Republic of Albania.

Information about the questionnaire

1. *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom?*

2. *On what grounds is the appeal admissible?*

3. *In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent?*

4. *Is there any prior checking of the admissibility of the appeal?*

1) Article 43 of the Albanian Constitution rules as follow:

"Anyone shall be entitled to file an appeal against a judicial decision before a higher court, except if otherwise provided in the law for criminal offences of a minor character, for civil and administrative matters of minor importance or value, according to the conditions provided in articles 17 of the Constitution."

It means that the law can provide criteria for inadmissibility of the recourse in the Supreme Court only having regard that the criminal offence has a minor character.

In the same time Article 432 of the Code of Criminal Procedure prescribes that every decision of the appeal court can be object of the recourse in the Supreme Court, but only if the recourse meets the criteria established by law and related to the content of the recourse. So practically Albania does not have any limits on the admissibility of the recourse that is related to the type of the appeal decision. The only criterion used by the law is the content of the recourse.

So the answer to the first question is that the appeal to the Supreme Court against the decisions of the appeal court is admissible against all judgments relating to personal freedom.

2) Article 432 of Albanian Code of Criminal Procedure, in the relevant part, rules as follow:

"1. Appeal to the High Court against decisions issued by the Court of Appeal may be filed for the following reasons:

a) non-compliance with or improper application of substantive or procedural law, which is important for uniform interpretation or development of the judicial practice;

b) non-compliance or wrong application of procedural law, having as consequence the invalidity of the decision, absolute invalidity of acts or non-usability of evidence;

c) the decision subject to appeal is contrary to the practice of the Criminal Chamber or Joint Chambers of the High Court."

3) The reasoning of the decision of the appeal court, according to the Article 432 of the Code, is a legal ground to lodge an appeal in the Supreme Court. The lack of reasoning

of a judicial decision can cause the invalidity of the decision. According to the Code there are two types of invalidity of the procedural act, the relative and the absolute invalidity. Article 112 of the Code, in the relevant part, rules that:

"3. Decisions and orders must be reasoned, otherwise they are invalid."

According to the Albanian Constitutional Court and Albanian Supreme Court jurisprudence, the lack of the reasoning in a judicial decision causes absolute invalidity of that procedural act. So the lack of the reasoning of the decision is a legal ground of lodging an appeal to the Supreme Court, according the letter "b" of the Article 432 of the Code. In this case the judicial decision object of the appeal will be quashed and the case will be brought again to the court which has caused the invalidity of the procedural act.

4) Article 433 of the Code rules that:

"1. The appeal is not admitted if it is filed for reasons different from the ones allowed by the law and if the High Court deems that the case must not be reviewed by it, pursuant to the provisions of paragraph 1, Article 432, of this Code.

2. A judicial panel of three judges shall decide on the inadmissibility of the appeal in closed session."

II

1. *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation?*

2. *How does the Court establish the principle of law?*

3. *In the most relevant cases or in the case of conflicts between to Courts' chambers, can the Grand Chamber or the Plenary Assembly rule the case or settle the conflict?*

1) The last-instance check on the merits in Republic of Albania, for every decision that can be appealed, is the court of appeal. So the Supreme Court is not the last-instance check on the merits in criminal merits.

The mission of the Supreme Court, as the last level of judicial jurisdiction in Albania, is ruled in article 141 of Albanian Constitution, which states as follows:

"1. The Supreme Court shall examine issues concerning the meaning and application of the law in order to ensure the unification or development of case law, in accordance with the law.

2. For the amendment of the case law, the Supreme Court shall review in the Joint Chambers specific judicial issues decided by the chambers, in accordance with the law."

This means that Albanian Supreme Court only deals with the compliance of the lower courts' decision with the relevant legislation.

2) Albanian Supreme Court establishes the principle of law in two ways.

Firstly, deciding to initiate a unifying process. Doing so, the panel of three judges in closed session or five judges during the hearing, the Supreme Court decides the thema decidendum of the unifying judgment rules on that at the end of the process. The unifying decision has the authority of the judicial precedent and is going to be published in the official journal of the Republic.

Secondly, deciding to initiate a process for the amendments of the case-law that is established before by the chambers of the Supreme Court. In this case the competent body will be the Plenary Assemble of the Supreme Court. The law rules that the subjects who can initiate these processes are the President of the Supreme Court or the chambers, in closed session or hearings.

3. The Plenary Assemble of the Supreme Court, when deciding to amend the case-law, rules on the case and settles the conflict. In the reasoning part of the decision the Plenary Assemble rules on the amendments of the case-law and in the dispositive part of the decision the Plenary Assemble rules on the conflict.

III

1. *What are the decision-making powers of the Supreme Court?*

2. *In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

1) There are two decision-making forums in the Albanian Supreme Court. The first is the closed session when every chamber is composed of three judges. In the closed session the chamber can decide whether to declare the appeal inadmissible or to have a hearing on it (see Article 433 as mentioned above). Secondly, the Supreme Court, chamber or Plenary Assemble, after adjudicating in an open session or in hearing can rule on the merits of the appeal.

Article 441 of the Code rules that:

"1. After reviewing the case, the Criminal Chamber or the Joint chamber of the High Court shall decide in the hearing:

a) to uphold the decision;

b) to quash the decision of the Court of Appeal and uphold the decision of the court of first instance;

c) to quash the decision and return the acts for re-examination;

ç) to quash the decision and dismiss the case without returning it for re-examination.".

2) No, the Albanian Supreme Court cannot re-determine the punishment to be applied.

Austria - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgements and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgement's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

- In criminal matters, the Supreme Court generally rules on appeals on points of law and procedure ("nullity appear7"Nichtigkeitsbeschwerde") against verdicts in jury trials (Art 344 of the Austrian Code of Criminal Procedure [CCP]) or judgements of courts with the participation of lay assessors (Art 281 CCP) as well as on appeals concerning the sentences imposed by such courts (Art 283 CCP ["Berufung"]) - the latter only, if such an appeal is filed together with a nullity appeal (Art 296 CCP). In these proceedings the Supreme Court acts as the second (and last) instance.

- The Supreme Court therefore does not rule on appeals against judgements of a single judge (even resulting in a prison sentence).

- The nullity appeal can be based only on specific grounds enumerated in Art 281 CCP, which in principle cover questions of procedure and of substantive law. However, Art 281 CCP also provides for a - solely formal - control of the judgement's reasoning (if it is unclear, incomplete or contradictory, i.e. if basic standards for the reasons of a decision as laid down in Art 281 para 1 CCP are ignored). Moreover, the Court is also enabled to correct serious shortcomings in the determination of the facts. But the Court never takes evidence on the question of guilt. So in the case of serious shortcomings in the determination of facts, the case would be sent back to the court of first instance for a new trial.

- Apart from that, the Procurator General may bring appeals to the Supreme Court, in the name of the correct application of the law (even concerning judgements of single judges [Art 23 and 292 CCP]).

- The Supreme Court also presides over decisions concerning the rights of those detained or incarcerated, known in common law jurisdictions as "Habeas Corpus". The Supreme Court decides on complaints of the violation of the fundamental right granted in Art 5 of the European Convention of Human Rights after exhaustion of all legal remedies ("Grundrechtsbeschwerde").

- Moreover (since 2007) any party to criminal proceedings may apply for a remedy concerning an alleged violation of his or her fundamental rights by a decision of lower courts (Art 363a CCP per analogiam).

- There is a prior checking of the admissibility of the nullity appeal (Art 285a CCP) executed by the trial court. Appeals may be dismissed by the first instance court on formal grounds (e.g. the exhaustion of the time limit, no right to appeal, no grounds [as laid down

in Art 281 CCP] denominated in the appeal). There is a remedy against this decision, on which the Supreme Court rules.

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of the law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary assembly rule on the case or settle the conflict?*

- The Supreme Court does not evaluate the merits of a case (for more details see the answer to question 1).

- The legal opinion of the Supreme Court is only binding in a particular case, namely when a judgement is quashed and the case is sent back to a subordinate court for a new trial and decision (Art 293 CCP).

- However all judgments of the Supreme Court are stored in an electronic database (https://www.ris.bka.gv.at/Jus/). The access to this database is unrestricted and free of charge. It provides the full text of the judgements as well as an systematic overview over the guiding principles of the Court's case law. The data base is fed by the Court's own Research and Documentation Office.

- A panel of the Court is normally composed of five Justices. Smaller panels of three rule on certain preliminary questions as well as the above mentioned (quasi constitutional) appeal concerning the violation of the right of liberty and security (Art 5 ECHR). In order to safeguard the uniformity of the jurisprudence of the Supreme Court, a simple panel must be supplemented by adding a further six members of the Supreme Court ("enlarged panel"), if it holds by ruling that a decision on an issue of fundamental importance would depart from the Supreme Court's consistent jurisprudence or from the last decision rendered on the issue by an enlarged panel, or that the jurisprudence of the Supreme Court has not given a uniform answer on a legal issue of fundamental importance (Art 8 of the Supreme Court Act). Therefore the legal opinion expressed in a judgement of an enlarged panel is binding for the Supreme Court itself until it is overruled by a new judgement of an enlarged panel or the underlying legislation is changed.

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

- If the Supreme Courts finds that a (severe) procedural error or a shortcoming in the judgement's reasoning has occurred, it (always) quashes the judgement and sends the case back to the first instance for a new trial and decision (Art 288 para 2 clause 1 and 2 CCP). This is true for procedural errors, when they led or may have led to a wrong judgement (in other words: are relevant for the outcome).

- In case of wrong application of substantive law (Penal Code) in the judgement (including hindrances to proceedings or legal restrictions on the punishment), the Supreme Court usually also quashes the judgement and sends the case back to the first instance. However, if all necessary facts are stated in the judgement of the first instance, the Supreme Court gives the final decision on the legal question itself (e.g. the subsumption). In this case it decides exclusively on the basis of the factual findings of the first instance (Art 288 para 2 clause 3 CCP). Therefore this is no exception to the principle that the Supreme Court does not take evidence on the question of guilt.

- Only in the latter case (of a final judgement) the Supreme Court also re-determines the punishment. This can only take place in a public hearing, where the Court takes evidence (solely) on questions concerning the punishment.

- If the Supreme Court dismisses a nullity appeal without a hearing, the file is sent to the Higher Regional Court (Oberlandesgericht) for a decision on a (joint) appeal against the punishment (Art 285i CCP).

Belgium - *Cour de Cassation*

1. - *En matière pénale, le recours devant la Cour supreme est-il recevable contre tous les arrets et jugements relatifs à la liberté individuelle? Quels sont les moyens selon lesquels un recours peut etre considéré recevable? En particulier, un recours est-il également recevable au motif d'un moyen erronée ou imparfait ou absent et, dans l'affirmative, dans quelles limites? Un controle préalable de la recevabilité du recours est-il prévu?*

La loi belge prévoit la possibilité de se pourvoir en cassation notamment contre les arrets de la chambre des mises en accusation par lesquels la détention préventive est maintenue, contre les arrets des chambres correctionnelles susceptibles de condamner le prévenu à une peine privative de liberté, et contre les jugements rendus par les tribunaux d'application des peines statuant, par exemple, en matière de libération conditionnelle ou de surveillance électronique.

En matière de liberté individueNe comme en n'importe quelle autre matière, la Cour vérifie toujours si le pourvoi a bien été introduit dans le délai et dans les formes prescrits par la loi. Si c'est le cas, le pourvoi sera déclaré recevable et la procédure attaquée sera vérifiée.

L'inexactitude d'un moyen, l'erreur dont il est entaché, ou le fait que le demandeur n'a fait valoir aucun grief, ne sont jamais des causes d'irrecevabilité du pourvoi : la Cour de cassation, en matière pénale, a le pouvoir et le devoir de soulever un moyen d'office si l'examen de la procédure fait apparatore une illégalité au redressement de laquelle le demandeur, prévenu ou inculpé, a intéret.

2. - *Le jugement par la Cour supreme a-t-il le caractère d'un controle de dernier ressort sur le fond ou d'un controle de droit pur? Comment la Cour établit-elle le principe de droit? Dans les cas les plus pertinents ou en cas de conflit, est-il prévu qu'une décision soit prise dans les assemblées plénières ou en chambres mixtes?*

Le controle exercé par la Cour de cassation ne peut en aucun cas empiéter sur l'appréciation en fait du juge du fond. Cette règie est si importante, en droit belge, qu'elle est inserite dans la Constitution. Un moyen mélangé de fait est irrecevable. Le controle exercé par la Cour est un controle de pur droit. L'établissement du principe de droit se fait par la mise en reuvre des techniques classiques d'interprétation de la loi, en tenant compte de l'apport des juridictions européennes.

La chambre criminelle de la Cour de cassation de Belgique est constituée de deux sections, une de langue franose et une de langue néerlandaise. En cas de disparité dans la jurisprudence des deux sections, celles-ci se réunissent en audience plénière pour faire disparaitre la contradiction.

3. - ***Quels sont les pouvoirs de décision de la Cour supreme? En particulier, la Cour supreme peut-elle recalculer la peine à appliquer et, le cas échéant, dans quelle mesure?***

La prohibition constitutionnelle évoquée au point 2 ci-dessus entrarne que la Cour, en aucun cas, ne peut recalculer la peine à appliquer. En cas d'iMégalité entachant celle-ci, la cassation est suivie du renvoi devant un autre juge du fond que celui ayant rendu la décision cassée. Une évolution est cependant à signaler. Autrefois, lorsque la peine était illégale, la Cour cassait l'entièreté de la condamnation. Aujourd'hui, si l'illégalité est limitée à la peine sans affecter la décision relative à la culpabilité, la Cour ne cassera que la première, la seconde restant intacte et s'imposant, dès lors, au juge de renvoi.

Bulgaria - *Supreme Court of Cassation*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

According to the Constitution of the Republic of Bulgaria and Judicial System Act the court structure in Bulgaria, that have jurisdiction on criminal cases, includes regional, military, district courts, courts of appeal, Specialized Criminal Court, Specialized Criminal Court of Appeal and Supreme Court of Cassation. According to the provisions in Criminal Procedure Code (CPC) regarding the subject matter jurisdiction and according to the provisions in Judicial System Act, competent to hear criminal cases as a first instance court are the regional, district courts and as a specialized courts the first instance cases are heard by the military courts, as well as the Specialized Criminal Court, which is made equal to a district court. As for the regional courts, there is a universal subject matter jurisdiction and under their jurisdiction are all criminal cases except those, which are under the jurisdiction of the district courts as a first instance as well as those cases which are under the jurisdiction of the military courts and Specialized Criminal Court. The competence of the district courts regarding the first instance hearing of criminal cases is established in the Criminal Procedure Code by explicitly indication of concrete characteristics of the crimes from the Criminal Code related to the crimes with high danger to society. Explicitly excluded from the subject matter jurisdiction of the regional and districts courts are also cases from the competence of the Specialized Criminal Court and military courts.

The sentences, which are enact by the regional courts are heard by the respective district court as an instance of appeal and those which are enacted by the district court as a first instance court are heard by the respective court of appeal. Instance of appeal regarding the acts of the Specialized Criminal Court is the Specialized Criminal Court of Appeal and regarding the acts of the military courts – the military court of appeal.

As a cassation instance of all criminal cases acts the Supreme Court of Cassation.

Among the acts that are subject of regular cassation review and that could affect the freedom of a person through impose, respectively confirmation of a punishment related to imprisonment, are the judgments and new sentences of the court of appeal, as well as new sentences enacted by the district court as an instance of appeal regarding cases of general nature. The judgments, enacted by the district court as an instance of appeal that confirms or amendments the first instance sentence of the regional court, no matter the character of the imposed punishment – whether it is connected to imprisonment or other type of criminal punishment, are no subject to cassation review. In those cases the intervention of cassation court is possible through procedure mechanism for re-opening

a criminal case as an extraordinary method for review of judicial acts that are entered into force.

Cassation grounds according to Article 348. (1) Criminal Procedure Code are present when:

1. the law is violated, i.e. when the law is applied incorrect or it is not applied law that should be applied. By law it is meant the substantive criminal law;

2. when a significant procedural breach has been admitted, which could be removed during the new hearing of the case. Significant procedural breach could be classified in two groups:

• Absolute, the establishment of which automatically lead to cancelation of the review act and returning the case for new hearing. The hypothesis of those breaches include:

o Lack of motives – it is always heavy procedure defect and the presence of this ground assumes or physical lack of motives to the review act or presence of significant incompleteness, unclearness and internal logical controversies in the reasoning of the review court that don't allow its actual will to be established;

o Lack of protocol from the hearing of the first instance or instance of appeal;

o Enact of sentence or judgment by illegal panel;

o Violation of the secrecy of deliberation on enacting the verdict of judgment.

• Relative – they demand the discretion of the court whether and to what extend the procedure violation is significant. It refers to cases when the violation of procedure rules led to limitation of procedural rights of the parties or just one of the parties.

3. when the imposed punishment is obviously unjust.

Review of admissibility of the appeal:

In the Criminal Procedure Code there is a procedure for review of the appeal (it could be submitted by the defendant, its lawyer, civil claimant and private prosecutor) and the protest (submitted by the prosecutor) with a review of their correspondence to the formal requirements for admissibility and regularity. In view of the fact that according to the procedural law the appeal and protest before the Supreme Court of Cassation should be submitted through the instance of appeal which enacted the disputed act on cassation order, this review for admissibility and regularity is made by the judge – reporter on the appealed case. Respectively, all actions on the review and removal of the eventual breaches and lack of correspondence during the appeal are made in front of the court that enacted the disputed judicial act. The Supreme Court of Cassation is not engaged with this activity. The Criminal Procedure Code does not establish explicitly the possibility for the Supreme Court of Cassation to make separate review for admissibility and regularity of the submitted cassation appeal or cassation protest. But that does not mean that such a review from the part of the Supreme Court of Cassation is not admissible. This court also could review the admissibility of the appeal or protest.

As for the restraining measures, which are applied on the defendant or accused persons during the proceedings, the Supreme Court of Cassation is competent to make review in one only hypothesis. When enacts judgement that is a subject of cassation review and that amend a verdict and determine the punishment by imprisonment that is not suspend with a term of probation or other more grave punishment, the instance of appeal enact on the restraining measures of the accused person and could amend the applied till that moment measure with grave measure or for the first time to determine a restraining measure, including those that affect the freedom of a person - arrest or domestic arrest. In those cases the act of the instance of appeal regarding the imposed restraining measure is a subject of appeal and protest before the Supreme Court of Cassation, which could remain in force the disputed judicial act, could amend it and to soften the imposed restraining measure as well as to cancel it and amend the applied till this moment restraining measure with more light or more grave, respectfully to take such a measure or to cancel the applied till this moment and not to take another on the accused person.

2. - ***Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?***

The cassation proceeding in Bulgaria is established as a control-cancel proceeding. The judicial pronouncing is after an appeal/protest of one of the parties and it is in the framework of the stated violations. The exception from this principle the law gives only regarding to the defendant that did not submit a cassation appeal when the cancelation of the verdict or judgment is in their favour (Article 347 paragraph 2 Criminal Procedure Code). In those cases, the cassation instance intervene the verdicts or judgments by their amendment or cancelation.

The cassation instance reviews only the right application of the substantive and procedural law as well as the justice of the imposed punishment. The incompleteness of evidence and groundlessness of the verdict or judgment is not subject of this control-cancel review if only they are not connected with a significant procedural violation that has been admitted, which led to incompleteness of evidence or groundlessness of the verdict. It is not allowed at the cassation proceeding to be collected evidence and establishment of new facts. The cassation review is made on the ground of facts that were established by the instance of appeal. The rightness of the inner conviction of the reviewed instance and its assessment of the evidence are not subject to a cassation review, but only the respect of the procedure and logical rules to form this assessment.

As a whole, acts the cassation principle when the reviewed instance finds vices, it cancels the reviewed act and remands the case for a new trail. The Supreme Court of Cassation could not cancel the verdict and enact a new one.

The exception from everything that has been said so far is the provision of Article 354 paragraph 5 Criminal Procedure Code according to which if cancel again the appealed or protested verdict or judgment, the cassation instance remand the case for its final judgment only to the instance of appeal. When there is an appeal or protest against the verdict or judgment of the instance of appeal, the Supreme Court of Cassation decides the case without remand it for a new trail and have the powers as an instance of appeal.

The Plenum of the Supreme Court of Cassation as well as the General Assembly of the Criminal College of this court have powers that are established at the Judicial System Act among which there is no such power to decide of particular criminal, civil and commercial cases.

In the framework of its constitutional obligation for supreme judicial review for the exact and equal application of law by all the courts (Article 124 Constitution of the Republic of Bulgaria), the Supreme Court of Cassation issues interpretative judgments in presence of contradictory or erroneous jurisprudence on the interpretation and application of the law. The request to be adopt interpretative judgment could be submitted by the president of the Supreme Court of Cassation, General prosecutor, the minister of justice, the Ombudsman or the president of the Supreme Lawyer Council. The interpretative judgments are obligatory for the bodies of the judiciary and Executive power, bodies of the local self-government as well as all the bodies that issued administrative acts.

3. - ***What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?***

The Supreme Court of Cassation has the following powers:

1. to remain the verdict or the decision;

2. to cancel the verdict or the decision and to discontinue or suspend the penal procedure in the stipulated by the law cases, and in the cases when the act is not committed or it is not a criminal offence – to acquit the defendant;

3. to cancel the verdict or the decision, to acquit the defendant and to impose administrative punishment when the committed act is punishable on administrative order in the cases, established in the Special part of the Criminal Code or when the act is administrative violation, established in a law or decree;

4. to ament the verdict or decision by:

- mitigate the punishment;

- apply law for the same or more lightly punishable offence;

- release the defendant from serving the punishment applying the institute of suspension of its execution with a term of probation;

- apply a law for more heavily punishable offence, which does not require aggravation of the punishment, in case there had been an accusation of such offence in the first instance and such request is made by the prosecutor or private prosecutor by submitting respectively protest or cassation appeal;

- to recognize or dismiss the civil claim, where there is an offence of the law or to increase or reduce the granted compensation for general damages or to discontinue the proceedings with regard to the civil claim

5. to cancel the verdict entirely or partially and remand the case back for new trial. This power could be exercised when there is a protest from the prosecutor or appeal from the private prosecutor when is needed that:

- to be imposed a heavier punishment;

- to be removed caused material procedural breaches;

- to be removed violations of the material law caused upon pronouncement of the of acquittal verdict.

When before the Supreme Court of Cassation it is disputed the justice of punishment with a request of its mitigation or aggravation whether its type or amount or with regard the opportunity of cumulative impose of different types of punishments (for example imprisonment and seizure; imprisonment and fine) or with regard to serving the punishment of imprisonment, the supreme judicial instance could intervene when finds out that there are violations of the requirements of the law regarding the determination of the punishment and/or its serving. For example, when the punishment was determinate it was not taken in consideration the circumstances that mitigate or aggravate the responsibility of the defendant or such circumstances are wrong interpreted from the review instance or their meaning is underestimated or overestimated or the defendant is free from serving the punishment when there are no legal preconditions for that or the term of probation for what the execution of the punishment by imprisonment was postpone, is imposed wrongly etc. In cases like this the Supreme Court of Cassation could mitigate the punishment by imposing lighten type of punishment or mitigate the amount of the imposed punishment. Correction in the same line is also possible when the Supreme Court of Cassation applies law for lighten punishable criminal offence in the framework of the factual conditions, which were accepted by the instance of appeal, i.e. in cases when the instance of appeal wrongly qualify the criminal offence from its legal point of view.

When the cassation assessment is regarding necessity of aggravation of the position of the defendant – for example by increasing the amount of the imposed punishment or by imposing other more grave sanction or by imposing cumulative punishment that is established by law or when the freedom of the defendant to serve the punishment by imprisonment is canceled, the Supreme Court of Cassation could not by himself executes the stated revision of the appealed act, cancels this act and remand the case for its new trail by another panel of the instance of appeal with instructions for the right application

of the law and does not have the powers to give indications regarding the exact amount of punishment that he thinks it is just.

The indications of the Supreme Court of Cassation are obligatory for the court to whom the case has been remand for a new trail regarding the phase since when the new trail of the case should start; regarding the application of the law except the cases when there are another factual states; regarding the necessity of removal of significant violations of the procedure rules.

Czech Republic - *Supreme Court*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

In the Czech Republic, the matter of criminal appeal as well as the extraordinary appeal (dealt with before the Supreme Court) is regulated by the Code of Criminal Procedure.

It clearly states the conditions under which an extraordinary appeal can be filed. In the context of personal freedom, the remedy is in principle available against all judgements and measures, if the statutory conditions are met.

Extraordinary appeal based only on the grounds connected to the judgement's reasoning is not admissible. There is a prior checking of the admissibility in respect of relatively strict statutory provisions. Please see below for details.

Statute No. 141/1961 Coll., Code of Criminal Procedure

Section 265a

Admissibility of an Extraordinary Appeal

(1) The final decision of the court may be contested by an extraordinary appeal on its merits if the court decided in the second instance and the law permits it.

(2) A decision on the merits means

a) a judgment by which the accused was found guilty and was imposed a punishment or protective measure or the punishment was waived,

b) a judgment by which the accused was acquitted of charges,

(…)

Section 265b

Grounds for Extraordinary Appeal

(1) An extraordinary appeal may be submitted only if there is one of the following reasons:

a) the decision in the matter was made by a court without jurisdiction or a court that was not properly manned, except for cases when a panel or a superior court decided instead of a single judge,

b) an excluded authority decided on the matter; this reason cannot be used if that fact was, for the person who filed the extraordinary appeal, already known in the preceding proceedings and was not objected to before the decision of an authority in the second instance,

c) the accused had no defence counsel during the proceedings, even though according to the law they should have had one,

d) the provisions on the presence of the accused at the main trial or in a public hearing were violated,

e)a criminal prosecution was conducted against the accused, even though it was not admissible by law,

f) it was decided on the referral of the matter to another authority, on the termination of the criminal prosecution, on the conditional suspension of the criminal prosecution or on the approval of a settlement without satisfying the conditions for such a decision,

g) the decision is based on an incorrect legal assessment of an act or on another incorrect assessment of the substantive law,

h) the accused was imposed a kind of punishment that the law does not permit, or they have been imposed a punishment outside the criminal penalty set out in the Penal Code for a criminal offence for which they were found guilty,

i) it was decided on the suspension of the sentence or on the suspension of the sentence with supervision without satisfying the conditions provided by law for such a procedure,

j) it was decided to impose protective measures without satisfying the conditions provided by law for its imposition,

k) certain part of the statements is missing or is incomplete in the decision,

l) it was decided on the dismissal or dismissal of an appeal against the decision or resolution referred to in Section 265a Subsection 2 Paragraph a) through g), without fulfilling the procedural requirements stipulated by law for such a decision or even though a reason for an extraordinary appeal referred to in Paragraphs a) through k) was given in the preceding proceedings.

(2) An extraordinary appeal can also be filed when the life prison sentence is imposed.

Section 265a

Admissibility of an Extraordinary Appeal

(4) Extraordinary appeals only against the grounds of the decision are not permissible.

Court of Appeal Decision

Section 265i

(1) The Supreme Court shall reject the extraordinary appeal,

a) if it is not admissible,

b) if it was filed on grounds other than those referred to in Section 265b,

c) if it was filed late, by an unauthorised person, or by a person who resubmitted it again when they had previously expressly withdrawn it,

d) if it does not satisfy the requirements of the contents of an extraordinary appeal,

e) if it is an extraordinary appeal clearly unsubstantiated,

f) if it is clearly evident that the proceedings on the extraordinary appeal could not significantly affect the status of the accused and the issue which is to be addressed by the initiative of the extraordinary appeal is not legally essential.

(2) In the justification of the resolution to refuse the extraordinary appeal, the Supreme Court shall only briefly state the reasons for the refusal by reference to the circumstances relating to the statutory grounds for the refusal.

2. - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

According to the legislation, the Supreme Court while deciding on the extraordinary appeal assesses the lawfulness and justification of those statements of the contested decision which are challenged by the extraordinary appeal and reviews only the legal (not the factual) aspects of the case.

The Supreme Court further decides on complaints for violation of law lodged by the ministry of justice whereas the extent of the review is limited to assessing the lawfulness and justification of the statements of the contested decision challenged by the complaint. The Supreme Court may review not only the legal, but also the factual aspects of the case.

To the respect of the principle of law, the Supreme Court naturally takes into consideration the Constitution and the European Convention as well as the case law of

the Constitutional Court of the Czech Republic and the European Court of Human Rights.

In the case of a conflict between a new opinion of the Chamber and a previous decision of the Court, the case is to be referred to the Grand Chamber. The number of the members of the Grand Chamber is stated by the statute, as follows.

Statute No. 141/1961 Coll., Code of Criminal Procedure

Court of Appeal Decision

Section 265i

(3) If the Supreme Court does not refuse the extraordinary appeal in accordance with Subsection 1, they shall examine the legality and justification of these statements of the decision against which the extraordinary appeal was lodged, the extent and reasons mentioned in the extraordinary appeal, as well as the proceedings preceding the contested part of the decision. The Supreme Court shall take into consideration the errors of the statements that were not contested by the extraordinary appeal only if they could affect the accuracy of statements against which the extraordinary appeal was filed.

(4) If an entitled person files a grounded extraordinary appeal against the statement of guilt, the Supreme Court shall also examine, in relation to the contested errors, the statement of punishment as well as other statements that have their basis in the statement of guilt, regardless of whether the extraordinary appeal was filed against these statements as well.

Statute No. 6/2002 Coll., On Courts and Judges

Section 19

(1) The Supreme Court decides in Chambers or Grand Chambers of the Divisions. In the Grand Chambers of the Divisions ("Grand Chamber") it decides only if the case has been referred to them pursuant to Section 20.

(3) The Grand Chambers consist of 9 Judges of the respective Division. However, if the Division consists of more than 27 Judges, the Grand Chamber of the Division shall consist of one third of all the Judges of the Division; if one third of the Judges of the Division is not an odd whole number, the Grand Chamber consists of the number of judges corresponding to an odd whole number higher than 9, following that proportion.

Section 20

(1) If the Chamber of the Supreme Court reaches a legal opinion in its decision, which is different from a legal opinion already expressed in a decision of the Supreme Court, it shall refer the case to the Grand Chamber. It gives reasons for this.

3. - ***What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?***

The Supreme Court while deciding on the extraordinary appeal can quash the contested decision and return it to the lower court for a new decision in the respective case or decide itself. However, the Supreme Court is limited in this regard, pursuant the following statutory provisions.

Statute No. 141/1961 Coll., Code of Criminal Procedure

Section 265k

(1) If the Supreme Court finds that the filed extraordinary appeal is justified, they shall revoke the contested decision or its part or even the defective proceedings preceding it.

(2) If only a part of the contested decision is defective and it can be separated from the rest, the Supreme Court shall revoke the decision only in this part; however, if they revoke, even if only in part, the statement of guilt, the entire statement of punishment will be revoked as well as other statements that have their basis in the statement of guilt. At the same time, they will also revoke further decisions based on the revoked decision or the revoked part of the related content, if they had lost their basis due to the revocation. The provisions of Section 261 are applied accordingly.

Section 265m

(1) The Supreme Court may, during the revocation of the contested decision, also decide itself on the matter by a judgment. However, the Supreme Court cannot

a) find the accused guilty of an act for which they were acquitted of charges or for which the criminal prosecution was terminated,

b) find the accused guilty of a more serious criminal offence than the one for which they were found guilty by the contested judgment,

c) impose a prison sentence to the accused for more than twenty to thirty years or life prison sentence if they have not previously been imposed such punishment by the examined decision or in connection with the judgment of the court in the first instance.

Croatia - *Supreme Court*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom?*

Under the Criminal Procedure Act that is currently in force, the Supreme Court is a second instance court that decides on appeals against first instance judgements given by the County Courts. Namely, in Croatian legal system, first instance criminal jurisdiction is divided between Municipal Courts and County Courts depending on severity of the offence (unless otherwise provided by law, Municipal Courts have jurisdiction to try criminal offences for which a fine or imprisonment of up to twelve years is prescribed by law as the principal sentence. County Courts have jurisdiction to try criminal offences for which imprisonment of more than twelve years or long-term imprisonment is prescribed by law and criminal offences that are subject to county court jurisdiction under special law).

The Supreme Court is also a third instance court that decides on appeals against second instance judgements, where the law so provides. Namely, an appeal may be lodged against the second instance judgement if it concerns a punishment of long-term imprisonment or if the second instance court has revised the first instance judgment of acquittal and rendered a judgement of conviction.

However, under the Act on Amendments to the Criminal Procedure Act that will enter into force on 1 January 2020 the Supreme Court will decide on appeal in the third instance whereas the High Criminal Court will take over the competence concerning appeals against first instance judgements given by the County Courts.

On what grounds is the appeal admissible?

Any judgement may be challenged:

1) for substantive violation of the criminal procedure provisions;

2) for violation of the criminal code;

3) for erroneous or incomplete determination of the factual situation;

4) in regard to the decision on the penalty, judicial admonition, suspended sentence, partial suspended sentence, substitution with community service, special obligations, protective supervision, safety measure, confiscation of the pecuniary advantage, seizure of objects, costs of criminal proceedings, civil claim for indemnification and public announcement of the judgment.

In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent?

Inadequate reasoning may be ground for appeal. Namely, a substantive violation of the criminal procedure provisions exists if:

- the judgement fails to contain any reasons or

- the judgement fails to contain reasons relating to the relevant facts or

- reasons relating to the relevant facts are entirely unclear or contradictory to a significant degree or

- a significant contradiction exists in the relevant facts between what is stated in the reasoning of the judgement on the contents of certain documents or depositions given in the proceedings and the documents or records themselves.

Is there any prior checking of the admissibility of the appeal?

An appeal must be lodged under time-limit prescribed by law and it must fulfil admissibility criteria required by the Criminal Procedure Act (concerning authorisation and legal grounds for appeal). The president of the panel of the first instance court or the panel of the higher court is authorised to dismiss a belated or inadmissible appeal.

2. - ***Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation?***

When deciding on appeal, the Supreme Court is authorised to examine the merits. Where deciding on cassation it deals only with legal issues.

How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?

A judge or a panel of the Supreme Court administer justice in compliance with the Constitution, EU acquis, international treaties, laws and others legal sources. The Supreme Court ensures the uniform application of the law and equal protection of all citizens before the law.

In practice, the Supreme Court has its Registry Department that reviews each decision and document of the Supreme Court in a way as to check whether a decision is in compliance with the general and the legal understanding adopted at the department meetings or/and with the legal view applied in some prior or coincident decision. If the Registrar notices the non-compliance, he or she contacts the reporting judge who subsequently notifies the panel that has made the decision. If the panel does not accept the Registrar's notice, it informs the Registrar who then informs the President of the Criminal Department who subsequently convenes the department meetings. Legal interpretation adopted at the Criminal Department meetings of the judicial department is

binding for all panels of the same department. It can be altered only at Criminal Department meetings.

3. - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

When deciding on appeal the Supreme Court may decide both on facts and on law, whereas when it decides on cassation it may decide only on law. When deciding on appeal, the Supreme Court may reject an appeal as unfounded and affirm the first instance judgement, whereas when deciding on cassation it may only dismiss the lodged request. However, in both cases, it may annul the first instance judgement and remit the case for retrial or anew decision or it may revise the judgement at first instance. Therefore, the Supreme Court may re-determine the punishment to be applied. The grounds for re-determination may be only legal, if it decides on cassation, whereas, when it decides on appeal the grounds for re-determination may be both factual and legal.

Denmark - *Supreme Court*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgements and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgement's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

There are no limits to the type of criminal case that can be admitted to the Supreme Court, e.g. judgements and measures relating to personal freedom. However, appeals to the Supreme Court are admitted after permission from the Appeal Permission Board (Procesbevillingsn^vnet). Normally, a criminal case will start in one of the district courts with the possibility to appeal the case to one of the High Courts. The judgements of the High Courts can only be appealed to the Supreme Court with the permission from the Appeal Permission Board. The permission will only be granted if the case is of fundamental or principle character or special reasons warrant it.

An appeal to the Supreme Court may be based 1) on the fact that the lower court(s) erred in law, 2) that the size of the penalty is not proportionate to the offense, or 3) that the lower court(s) misused the law.

The most frequent ground for appeal is the proportionality of the sentencing.

The Supreme Court does not assess whether the defendant is guilty or not, since this question has been established in the previous judgements. Thus, the circumstances of the case and the applicable legal rules have been established in the previous judgements. The assessment of the Supreme Court is therefore only concerned with determining whether the legal rules has been interpreted and applied correctly.

Therfore, not all judgements regarding personal freedom will be admitted before the Supreme Court.

2. - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower court's decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the GrandChamber or the Plenary Assembly rule on the case or settle the conflict?*

As mentioned above, the merits of a criminal case are established in the lower court's judgments, and thus the Supreme Court only assess the application of the legislation. The Supreme Court of Denmark does not have a Grand Chamber and, in cases of differing opinions between the judges, the judgment is decided by principle of majority.

3. - ***What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?***

As mentioned above, the Supreme Court have the final say in all matters regarding the application of the law, including the question of penalty, and thus the Supreme Court can re- determine the punishment to be applied.

Estonia - *Supreme Court*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgements and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgement's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

Appeals in cassation to the Supreme Court are admissible against almost all judgements, except in settlement proceedings, and almost all rulings relating to personal freedom. However, the Supreme Court does not accept all admissible appeals.

An appeal in cassation against a court judgement shall be accepted if at least one justice of the Supreme Court finds that:

1) the allegations made in the appeal in cassation give reason to believe that the circuit court has applied substantive law incorrectly or has materially violated criminal procedural law;

2) the appeal in cassation contests the correctness of application of substantive law or requests annulment of the judgment of a circuit court due to material violation of criminal procedural law, and a judgment of the Supreme Court is essential for the uniform application of law or elaboration of law.

The Supreme Court shall accept an appeal against a ruling made in the hearing of an appeal against a ruling in a circuit court if the decisions of the Supreme Court in this matter is essential for uniform application of law or elaboration of law.

An appeal may be accepted on the grounds to the judgement's reasoning, if the above-named legal basis for the acceptance of the appeal is met.

Decision on acceptance of an appeal in cassation is made in pre-trial proceedings by a three-member panel of the Criminal Chamber of the Supreme Court.

2. - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower court's decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the GrandChamber or the Plenary Assembly rule on the case or settle the conflict?*

The Supreme Court does not establish facts. Thus, the proceedings before the Supreme Court deal with the compliance of the lower courts' decisions with the relevant legislation. To be more precise, the Supreme Court examines if the substantive law has been applied correctly and whether there have been any material violations of criminal procedure.

The Supreme Court is guided by the Constitution of the Republic of Estonia, the generally recognised principles and provisions of international law and international agreements binding on Estonia, national law and previous decisions of the Supreme Court.

If fundamentally different opinions arise as to the application of the law in a three-member panel of the Criminal Chamber of the Supreme Court or if there is reason to believe that a need arises to amend a position regarding application of the law maintained by the Criminal Chamber in an earlier decision, a criminal matter shall be referred for hearing by the full panel of the Criminal Chamber which shall comprise at least five justices of the Supreme Court.

If the Criminal Chamber of the Supreme Court finds in the hearing of a criminal matter that it is necessary to interpret the law so as to amend a position of another chamber of the Supreme Court or a position maintained in the most recent decision of the Special Panel or this is necessary for ensuring uniform application of law, the criminal matter shall be referred for hearing by a Special Panel of the Supreme Court. The members of a Special Panel of the Supreme Court are: 1) the Chief Justice of the Supreme Court as the presiding judge; 2) two justices of the Criminal Chamber of the Supreme Court;

3) two justices from such chamber of the Supreme Court whose position concerning application of the law is contested by the Criminal Chamber.

A criminal matter is referred to the Supreme Court en banc if:

1) the majority of the full panel of the Criminal Chamber reaches a different opinion than the legal principle or position hitherto held by the Supreme Court en banc on the application of law;

2) the majority of the full panel of the Criminal Chamber considers the adjudication of the criminal matter by the Supreme Court en banc to be essential for the uniform application of the law;

3) that adjudication of the criminal matter requires adjudication of an issue subject to hearing on the basis of the Constitutional Review Court Procedure Act.

3. - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

The Supreme Court hears a criminal matter within the limits of the appeal in cassation. The Supreme Court extends the limits of hearing a criminal matter to all the accused and all the criminal offences they are accused of regardless of whether an appeal in cassation has been filed with regard to them if incorrect application of substantive law which has aggravated the situation of the accused or a material violation of criminal procedural law becomes evident.

The Supreme Court may, by a judgment:

1) refuse to amend a judgment made by a circuit court and deny the appeal in cassation;

2) refuse to make substantive amendments to the judgment of a circuit court and make corrections thereto which do not aggravate the situation of the convicted offender;

3) amend the main part of a court judgment by replacing the legal reasons therein by the reasons of the Supreme Court or excluding the facts presented in the main part of the court judgment;

4) annul a court judgment and terminate the criminal proceeding on the grounds prescribed in clauses 199 (1) 2)-6) of the Criminal Procedure Code (for example if the limitation period for the criminal offence has expired or the accused is dead);

5) annul a judgment of a circuit court and enforce the judgment of the county court;

6) annul a court judgment in full or in part and refer the criminal matter for a new hearing by the court which applied substantive law incorrectly or materially violated criminal procedural law;

7) annul a court judgment made in a criminal matter in full or in part and, without collecting any additional evidence, make a new judgment which does not aggravate the situation of the accused;

8) annui the court judgment made in the settlement proceedings in full and send the criminal file to the prosecutor's office.

Thus, the Supreme Court can re-determine the punishment to be applied, if it does not aggravate the situation of the accused. If the Supreme Court annuls a circuit court judgement on the basis of an appeal of the prosecutor alleging an incorrect application of substantive law while imposing a sentence, the Supreme Court refers the matter back to circuit court for a new hearing.

Finland - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

Under the Finnish Constitution, "justice in civil, commercial and criminal matters is in the final instance administered by the Supreme Court". The most important function of the Supreme Court is to establish judicial precedents in leading cases thus ensuring uniformity in the administration of justice by the lower courts.

In criminal matters, decisions of courts of appeal (as well as decisions of the District Courts where the need for precedent is evident) may be appealed against to the Supreme Court, provided that the Supreme Court grants leave to appeal.

The preconditions to granting of leave to appeal are as provided in Chapter 30, section 3 (1) of the Code of Judicial Procedure, under which the Supreme Court may only grant leave to appeal on the following grounds:

1. a decision of the Supreme Court is necessary for the application of law in identical or similar cases or for the consistency of case law;

2. an error in procedure or other error has taken place in the case, which by virtue of law requires that the decision be quashed;

3. there are other weighty reasons for granting leave to appeal.

The purpose of the requirement of leave to appeal is to enable the Supreme Court to concentrate on guiding judicial practice through precedent, which means that the first ground is the most important one.

The admissibility of the case, i.e. the granting of leave to appeal, is decided on by one to three members of the Court upon presentation by a referendary. This means that the members make the decision on the basis of the preliminary work and opinion of the referendary. In case an application for leave to appeal is rejected, the case will be closed and the judgment of the court of appeal will remain final. It is also possible to grant a limited leave to appeal, so that the Supreme Court may for example rely on facts as presented in the judgment by the court of appeal or only review a certain legal question.

There are no provisions in law forbidding appeals that are solely based on the judgment's reasoning. In praxis, it is, however, usually forbidden. When the end result is as a party has claimed, they usually don't have sufficient interest to appeal. This rule of thumb isn't absolute and there are exceptions to it in case law. In these cases the party is

required to prove a legal need or otherwise sufficient interest in changing the wording in the reasoning.

For a more extensive presentation on Filtering the Appeals to the Supreme Court, please see our website: https://korkeinoikeus.fi/en/index/lausunnot/justicejukkasippofilteringtheappealstothesupremecourtthefinnishapproach.html

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

The review process isn't restricted solely to questions of law, questions of facts may be addressed as well. This varies from case to case depending on the application and how broadly the leave to appeal is granted.

As stated above, the most important function of the Supreme Court is to rule on important points of law in cases which are significant for the entire legal order, guiding thereby the administration of justice in future cases. Precedents are usually created in cases for which the applicable Acts of Parliament and Decrees do not provide a clear solution for a question of law or in which there is room for interpretation. Approximately 100 such precedents are decided each year. The Supreme Court also makes decisions which are not published (= other cases than precedents).

Under the Finnish legal system a judicial precedent is not binding. Courts of appeal and even district courts may depart from earlier decisions made by the Supreme Court, for example when the social circumstances have considerably changed. In practice, however, precedents of the Supreme Court are followed in cases arising after the precedent has been created and involving a similar point of law. The Supreme Court may also itself depart from its earlier precedents, provided that the case is considered by an enlarged chamber (11 members) or by a full court. The case is also decided a by an enlarged chamber or plenary assembly if a question of law to be resolved involves significant principles.

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

The Supreme Court may judge on the merits. If only one party to a case appeals the lower court's judgment, it may not be amended to his detriment – with the exception that in criminal cases the outcome may always be more lenient to the defendant (even if only the prosecutor appeals).

France - *Cour de Cassation*

1. - Questions relatives à la recevabilité des moyens de cassation

En matière pénale, le recours devant la Cour suprême est-il recevable contre tous les arrêts et jugements relatifs à la liberté individuelle?

En matière pénale, les pourvois devant la Cour de cassation sont recevables s'ils remplissent des critères juridiques précis mais qui ne touche jamais à la nature du litige. Ainsi, si les règles de recevabilité sont respectées, toutes questions relatives à la liberté individuelle telle que la régularité d'une détention provisoire[1], d'une garde à vue[2], d'une perquisition[3], ou d'une saisie[4] peut être soumise à la Cour de cassation .

Quels sont les moyens selon lesquels un recours peut être considéré recevable?

Décisions avant dire droit : En application des dispositions de l'article 570 du code de procédure pénale, les décisions avant dire droit, à la différence de la matière civile, peuvent être frappées d'un pourvoi en cassation. Toutefois, sauf décision contraire du Président de la chambre criminelle, ces pourvois seront mis de côté et ne seront examinés qu'en même temps que le pourvoi formé sur la décision statuant au fond.

Le pourvoi contre une décision rendue sur le fond – Pour qu'un moyen soit recevable devant la Cour de cassation en matière pénale[5], il doit porter sur :

La violation de la loi : Ce cas d'ouverture à cassation est prévu par l'article 591 du code de procédure pénale : « *Les arrêts de la chambre de l'instruction ainsi que les arrêts et jugements rendus en dernier ressort par les juridictions de jugement, lorsqu'ils sont revêtus des formes prescrites par la loi, ne peuvent être cassés que pour violation de la loi.* »

Le manque ou défaut de base légale est prévu par l'article 593 alinéa 1 du code de procédure pénale : « *Les arrêts de la chambre de l'instruction, ainsi que les arrêts et jugements en dernier ressort sont déclarés nuls s'ils ne contiennent pas des motifs ou si leurs motifs sont insuffisants et ne permettent pas à la Cour de cassation d'exercer son contrôle et de reconnaître si la loi a été respectée dans le dispositif.* »

le défaut ou la contradiction de motifs est prévu par les dispositions relatives à la motivations des arrêts et décisions – articles 485 du Code de procédure pénale pour les décisions de police ou correctionnelles et 365-1 du Code de procédure pénale pour la cour d'assises

le défaut de réponse à conclusion est prévu par l'article 593 alinéa 2 du Code de procédure pénale : « *Il en est de même lorsqu'il a été omis ou refusé de prononcer soit sur une ou plusieurs demandes des parties, soit sur une ou plusieurs réquisitions du ministère public.* »

Les moyens de cassation doivent être clairs et précis[6]. Ainsi, « *n'a pas été examiné par la Cour de cassation le mémoire personnel du demandeur, qui n'offre à juger aucun point de droit et ne formule aucun grief précis* »[7]. L'irrégularité invoquée doit personnellement faire grief au demandeur[8].

Selon la règle dite de « *l'unique objet* », sont irrecevables les moyens étrangers à l'objet du recours soumis à la Cour de cassation. Par exemple, « *les personnes mises en examen ne sauraient présenter, à l'occasion de l'exercice d'une voie de recours portant sur la détention, des demandes étrangères à son unique objet* »[9].

En outre, les moyens ne peuvent pas se fonder sur un élément nouveau qui n'aurait pas été préalablement soulevé devant la juridiction d'instruction ou d'appel. Selon l'article 599 du Code de procédure pénale « *en matière correctionnelle, le prévenu n'est pas recevable à présenter comme moyen de cassation les nullités commises en première instance s'il ne les a pas opposées devant la cour d'appel, à l'exception de la nullité pour cause d'incompétence lorsqu'il y a eu appel du ministère public. En matière criminelle, l'accusé n'est pas recevable à présenter comme moyen de cassation les nullités qu'il n'a pas soulevées devant la cour d'assises statuant en appel conformément aux prescriptions de l'article 305-1* ». Par ailleurs, selon l'article 595 du Code de procédure pénale , « *lorsque la chambre de l'instruction statue sur le règlement d'une procédure, tous moyens pris de nullités de l'information doivent lui être proposés, faute de quoi les parties ne sont plus recevables à en faire état, sauf le cas où elles n'auraient pu les connaître, et sans préjudice du droit qui appartient à la Cour de cassation de relever tous moyens d'office* ».

Dès lors, le demandeur ne peut invoquer de nouveaux moyens sauf à en justifier la recevabilité. Il devra alors se baser sur les constatations de l'arrêt, ses conclusions d'appels ou le procès-verbal des débats[10]. Ainsi, est irrecevable le nouveau moyen invoqué pour la première fois par le demandeur devant la Cour de cassation[11] et mélangés de fait et de droit[12]. Surtout, « *la Cour de cassation ne peut ni réviser les constatations de fait de l'arrêt, ni procéder à de nouvelle constatations* »[13].

Exceptions - Comme en matière civile, il existe deux exceptions à l'irrecevabilité des nouveaux moyens prévues par l'article 595 du Code de procédure pénale :

- si le moyen était inconnu des parties ; c'est le cas lorsqu'il est révélé par la décision attaquée[14].

- si le moyen est d'ordre public[15].

En particulier, un recours est-il également recevable au motif d'un moyen erronée ou imparfait ou absent et, dans l'affirmative, dans quelles limites?

Un contrôle préalable de la recevabilité du recours est-il prévu?

Selon l'article 605 du Code de procédure pénale, « *la Cour de cassation, avant de statuer au fond, recherche si le pourvoi a été régulièrement formé. Si elle estime que les conditions légales ne sont pas remplies, elle rend, suivant les cas, un arrêt d'irrecevabilité, ou un arrêt de déchéance* ». L'arrêt d'irrecevabilité « *se fondent sur un vice qui affecte le recours dès son origine, soit qu'il ait été formé contre une décision insusceptible de pourvoi, soit que le demandeur n'ait pas qualité ou pas d'intérêt pour l'introduire, soit qu'il l'ait formé hors délai, soit qu'il ait agi au mépris de l'interdiction de réitérer formulée par l'article 618 du Code de procédure pénale* »[16]. Il ne faut pas confondre l'irrecevabilité du

pourvoi et celui des moyens de cassation. Le premier entraîne un arrêt d'irrecevabilité alors que le second permet le rejet au fond des moyens de la partie demanderesse au pourvoi.

Les décisions de non admissions – Le Code de procédure pénale ne prévoit pas de filtrage des pourvois selon la nature ou la teneur des moyens. L'examen de la recevabilité se fait à l'issue de l'audience. Si le pourvoi est irrecevable, la chambre criminelle doit rendre une décision de non admission. La loi du 25 juin 2001, relative au statut des magistrats et au conseil supérieur de la magistrature a introduit un article L. 131-6 du code de l'organisation judiciaire devenu l'article 567-1 du code de procédure pénale relatif aux décisions de non admissions rendues par la Cour de cassation. Ce sont des arrêts de rejets ou d'irrecevabilité non motivés rendus pour des pourvois irrecevables ou manifestement dépourvus de tout fondement.

Ces décisions sont précédées d'un avis de non-admission rédigé par le rapporteur et adressé aux parties qui explique les raisons pour lesquelles un arrêt de non-admission est proposé.

La décision de non-admission est fondée sur la légalité des moyens et non sur l'opportunité. « *La seule différence qui existe entre un arrêt de rejet ou d'irrecevabilité et une décision de non-admission réside dans le fait que le premier explique pourquoi le pourvoi est irrecevable ou infondé, tandis que la seconde ne l'explique pas. […] La décision de non-admission n'est donc pas prononcée ab initio, en début de procédure, par une formation autonome, mais par la Chambre criminelle au terme d'une instruction complète du dossier, pour la bonne et simple raison que c'est cette instruction complète qui permet à la Cour de cassation de savoir si le pourvoi doit, ou non, être admis* »[17].

La chambre criminelle admet désormais de déclarer non admis un moyen de cassation, voire une branche du moyen et non le pourvoi tout entier[18]. Il résulte en effet de la jurisprudence que « *la chambre criminelle peut, en application de l'article 567-1-1 du code de procédure pénale, déclarer non admis certains moyens du pourvoi qui sont irrecevables ou non fondés sur un motif sérieux de cassation* »[19]. La Haute juridiction peut donc déclarer non-admis le moyen irrecevable au sens de l'article 567-1-1 du Code de procédure pénale sans écarter l'ensemble du pourvoi. Aussi, « *la procédure de non-admission, qui est conforme aux dispositions de l'article 6 de la Convention européenne des droits de l'homme, est fondée sur l'absence de moyen sérieux dans les termes de l'article 567-1-1 du code de procédure pénale, laquelle est explicitée par le rapporteur, pour permettre le respect du contradictoire, avant que la formation collégiale ne se prononce. En conséquence, doit être rejetée la requête en récusation fondée sur le grief de partialité formulée à l'encontre du conseiller qui a proposé la non-admission d'un pourvoi* »[20].

Cette procédure permet d'examiner les pourvois en écartant les moyens qui sont irrecevables ou dénués de sérieux. La Chambre criminelle peut donc se prononcer sur les moyens présentant un réel intérêt légal.

2. - Questions relatives à l"étendue du contrôle de la Cour de cassation

Le jugement par la Cour suprême a-t-il le caractère d'un contrôle de dernier ressort sur le fond ou d'un contrôle de droit pur?

La Cour de cassation est la juridiction suprême de l'ordre judiciaire français. « *Il y a, pour toute la République, une Cour de cassation* »[21].

La mission de la juridiction régulatrice est « *d'unifier la jurisprudence, de faire en sorte que l'interprétation des textes soit la même sur tout le territoire. C'est l'unicité de la juridiction qui permet l'uniformité de l'interprétation, et donc l'élaboration d'une jurisprudence appelée à faire autorité. Unicité et uniformité sont les conditions l'une de l'autre. […] La Cour de cassation ne constitue pas, après les tribunaux et les cours d'appel, un troisième degré de juridiction. Elle est appelée, pour l'essentiel, non à trancher le fond, mais à dire si, en fonction des faits qui ont été souverainement appréciés dans les décisions qui lui sont déférées, les règles de droit ont été correctement appliquées* »[22].

En effet, selon l'article L.411-2 du Code de l'organisation judiciaire, « *la Cour de cassation statue sur les pourvois en cassation formés contre les arrêts et jugements rendus en dernier ressort par les juridictions de l'ordre judiciaire. La Cour de cassation ne connaît pas du fond des affaires, sauf disposition législative contraire* ».

Par exemple, la Haute juridiction ne peut pas contrôler des moyens de pur fait relevant de l'appréciation souveraine des juges du fond[23]. De plus, « *n'a pas été examiné par la Cour de cassation le mémoire personnel du demandeur, qui n'offre à juger aucun point de droit et qui ne formule aucun grief précis* »[24]. « *De même, la Cour de cassation, juge du droit, ne peut demander compte au juge du fond de l'usage qu'il a légalement fait de son pouvoir discrétionnaire. Ainsi la décision du président de la Cour d'assises d'user ou de ne pas user du pouvoir que lui confère l'article 310 du Code de procédure pénale ne peut faire l'objet d'un moyen de cassation* »[25].

Toutefois en matière pénale comme en matière civile, l'article L.411-3 du Code de l'organisation judiciaire offre à la Chambre criminelle le pouvoir de casser sans renvoi[26]. La Cour peut ainsi mettre fin au litige en appliquant la règle de droit appropriée.

Exception - Par exception au principe précédemment mentionné, la Cour de cassation a des pouvoirs très étendus en droit de la presse. Elle opère en cette matière un contrôle dit « lourd » s'apparentant à un contrôle des faits.

Comme le note Pierre Guerder, « *depuis plus d'un siècle, la Cour de cassation persiste à contrôler et rectifier les appréciations des juges du fond en ce qui touche les éléments du délit, tels qu'ils se dégagent de l'écrit ou des propos visés dans l'acte initial de la poursuite, réquisitoire ou citation*[27]. *[…] La Cour de cassation a le droit et même le devoir, en matière de presse, de contrôler le sens et la portée des propos incriminés par l'acte de poursuite. C'est ainsi qu'elle assure l'unification de la jurisprudence des juges du fond, comme d'ailleurs aussi l'unité en son sein. […] Le contrôle n'a pas seulement pour objet de vérifier la signification diffamatoire ou injurieuse, offensante, outrageante ou discriminatoire des propos, dessins ou images qui font l'objet de la poursuite. Il porte aussi sur les autres éléments du délit* »[28]. Par exemple, la Haute juridiction contrôle l'existence et identification de la victime, la réunion des éléments constitutifs du délit comme sa publicité ainsi que la présence d'immunités. « *Elle n'abandonne à l'appréciation souveraine des juges du fond que les données de fait extrinsèques à*

l'écrit incriminé ou la teneur des éléments de preuve de la vérité des faits et de la bonne foi. Mais elle contrôle leur adéquation avec la prévention et leur portée exonératoire »[29].

Comment la Cour établit-elle le principe de droit?

Dans la mesure où la Cour de cassation ne juge qu'en droit, ses arrêts énoncent des règles ayant vocation à s'appliquer à toutes les juridictions confrontées à l'application de la même règle de droit. Afin d'assurer la diffusion de ces décisions, les arrêts importants sont publiés.

Dans les cas les plus pertinents ou en cas de conflit, est-il prévu qu'une décision soit prise dans les assemblées plénières ou en chambres mixtes?

En principe, la Chambre criminelle de la Cour de cassation connaît des affaires relevant de la matière pénale. Mais, selon l'article L.431-5 du Code de l'organisation judiciaire, « *le renvoi devant une chambre mixte peut être ordonné lorsqu'une affaire pose une question relevant normalement des attributions de plusieurs chambres ou si la question a reçu ou est susceptible de recevoir devant les chambres des solutions divergentes ; il doit l'être en cas de partage égal des voix* ».

Surtout, selon l'article L.431-6 du Code de l'organisation judiciaire, « l*e renvoi devant l'assemblée plénière peut être ordonné lorsque l'affaire pose une question de principe, notamment s'il existe des solutions divergentes soit entre les juges du fond, soit entre les juges du fond et la Cour de cassation ; il doit l'être lorsque, après cassation d'un premier arrêt ou jugement, la décision rendue par la juridiction de renvoi est attaquée par les mêmes moyens* ».

La décision de renvoyer l'affaire à une de ces chambres, sauf cas de rébellion de la juridiction de renvoi, revient au premier président de la Cour de cassation ou au procureur général. Selon l'article L.431-7 du Code de l'organisation judiciaire, « l*e renvoi devant une chambre mixte ou devant l'assemblée plénière est décidé soit, avant l'ouverture des débats, par ordonnance non motivée du premier président, soit par arrêt non motivé de la chambre saisie. Le renvoi est de droit lorsque le procureur général le requiert avant l'ouverture des débats* ».

3. - Questions relatives aux pouvoirs de décision de la Cour de cassation

Quels sont les pouvoirs de décision de la Cour suprême? En particulier, la Cour suprême peut-elle recalculer la peine à appliquer et, le cas échéant, dans quelle mesure?

En principe, la Cour de cassation se cantonne au contrôle de l'application du droit par les juges du fond.

La Cour régulatrice rejette le pourvoi lorsque celui-ci ne démontre pas d'erreur de droit entraînant la cassation de l'arrêt attaqué au titre des dispositions du Code de procédure pénale[30].

Lorsqu'elle casse un arrêt, la Chambre criminelle renvoie l'affaire à une autre juridiction pour être jugée au fond. Seulement, elle peut casser l'arrêt attaqué sans

renvoyer. Elle dispose alors, dans une certaine limite, d'un pouvoir de substitution du dispositif attaqué pour des erreurs simples et réparables.

Selon l'article L.411-3 du Code de l'organisation judiciaire, *« la Cour de cassation peut casser sans renvoi lorsque la cassation n'implique pas qu'il soit à nouveau statué sur le fond. Elle peut aussi, en cassant sans renvoi, mettre fin au litige lorsque les faits, tels qu'ils ont été souverainement constatés et appréciés par les juges du fond, lui permettent d'appliquer la règle de droit appropriée. En ces cas, elle se prononce sur la charge des dépens afférents aux instances civiles devant les juges du fond. L'arrêt emporte exécution forcée. Les modalités d'application du présent article sont fixées par décret en Conseil d'État* ».

Il peut y avoir cassation sans renvoi lorsque les faits ne constituent pas une infraction au sens de la loi[31], que le texte a été abrogé[32] ou lorsque l'une des causes d'extinction de l'action publique est acquise[33]. La Cour de cassation peut ainsi mettre fin à la procédure en se basant sur les constatations des juges du fond quand la solution est évidente. Il en résulte un gain de temps et de moyen pour les parties comme pour l'institution judiciaire.

Par ailleurs, aux termes de l'article L.411-3 du Code de l'organisation judiciaire, si la Haute juridiction peut, dans certains cas limités, statuer au fond en matière civile, en matière pénale elle dispose du seul pouvoir de substitution du dispositif pour des erreurs simples et réparables. « *Sans aborder le domaine de la constatation et de l'appréciation souveraine des faits qui excéderait ses pouvoirs, la Cour de cassation est donc autorisée à substituer un dispositif à celui qu'elle annule et à vider le litige aux lieu et place de la juridiction de renvoi. Les termes mêmes de ce texte en limitent le domaine, car la cassation prononcée oblige presque toujours à procéder à de nouvelles appréciations de fait. La faculté ainsi accordée à la chambre criminelle permet d'accélérer la solution du procès lorsque les faits sont simples et que l'erreur commise par les juges du fond est aisément réparable. Dans ce cadre limité, le texte peut rendre des services* »[34].

Ainsi, la Cour de cassation a pu éviter le renvoi à la juridiction d'appel pour la fixation du montant d'un préjudice subi à l'occasion d'un accident de la circulation, celui-ci pouvant être déduit des constatations des juges du fond[35]. La chambre criminelle peut aussi corriger les erreurs de droit des juges du fond quant au calcul de l'indemnisation d'une victime d'un accident du travail[36], ou de la valeur totale de marchandises prohibées[37].

Sur la peine - Plus précisément, en matière de peine, la Cour régulatrice est liée aux constatations de fait des juridictions de fond. La jurisprudence compte toutefois quelques exemples de cassation sans renvoi dans lesquels la Chambre criminelle a modifié la peine prononcée. Lorsque la juridiction du fond prononce une peine dépassant le maximum légal, la Cour régulatrice peut substituer cette peine au maximum légal prévu par la loi[38].

1 Crim., 11 décembre 2018, pourvoi n° 18-85.460, Bull. crim. 2018, n°208, Crim., 13 février 2019, pourvoi n° 18-86.559, Bull. crim. 2019, n°33

2 Crim., 11 décembre 2018, pourvoi n° 18-82.854, Bull. crim. 2018, n°209, Crim., 11 décembre 2018, pourvoi n° 18-80.872, Bull. crim. 2018, n°210

3 Crim., 9 janvier 2019, pourvoi n° 17-84.026, Bull. crim. 2019, n°8

4 Crim., 19 décembre 2018, pourvoi n°18-85.712, Bull. crim. 2018, n°218, Crim., 17 avril 2019, pourvoi n° 18-84.057, en cours de publication

5 *Notons que la dénaturation* est mal définie en matière criminelle allant tantôt avec le défaut de motifs ou le manque de base légale. En tout état de cause, aucun article ne le prévoit même si certains auteurs comme Jacques et Louis Boré le mentionne.

6 « *Ne met pas la Cour de Cassation en mesure de l'examiner, un mémoire dont l'obscurité et l'imprécision ne permettent pas de dégager les moyens* » -Crim., 20 novembre 1974, pourvoi n° 74-91.140, Bull.Crim.n°341.

7 Crim., 23 mai 1964, pourvoi no 64-90.544 , Bull. crim. 1964, n°170

8 « *Un prévenu ne saurait se faire un grief de la prétendue irrégularité affectant l'interpellation d'un coprévenu* ». Crim., 21 octobre 1992, pourvoi n° 89-84.678, Bull. crim. 1992 N° 332.

9 Crim., 6 juin 2000, pourvoi n° 00-81.746, Bull. crim. 2000, n° 211.

1 0 « *Le prévenu ne peut faire valoir devant la Cour de cassation des nullités de la procédure d'instruction, s'il ne résulte ni des énonciations de l'arrêt, ni de celles du jugement, ni d'aucunes conclusions régulièrement déposées devant le tribunal qu'il ait présenté devant les premiers juges les exceptions tirées de ces nullités* » - Crim., 19 juin 1974, pourvoi n° 72-91.873, Bull. Crim. 1974, n° 228

1 1 « *Un moyen de cassation, fondé sur des pièces qui n'ont pas été soumises à l'examen des juges du fond est nouveau et, comme tel, irrecevable* » - Crim., 30 avril 1996, pourvoi n° 95-84.271, Bull. crim. 1996, n° 180.

1 2 « *La personne poursuivie, sur le fondement de l'article 24 bis de la loi du 29 juillet 1881, pour avoir adressé à un site internet ayant pour objet la lutte contre le révisionnisme des messages contenant des propos niant l'existence des chambres à gaz, et qui fait valoir, pour sa défense, qu'elle croyait intervenir dans un "forum de discussion", ne peut prétendre qu'elle ignorait que ses messages seraient diffusés. N'ayant pas contesté devant les juges du fond le fait que les messages avaient effectivement été mis à la disposition du public, le prévenu ne peut invoquer ce moyen, nouveau et mélangé de fait devant la Cour de cassation* » - Crim., 5 novembre 2002, pourvoi n° 01-88.461, Bull. crim. 2002, n° 200.

1 3 Jacques Boré et Louis Boré, *Op. cit.*, §112.32.

1 4 Par exemple : En cas de manquement quant à la composition ou au nombre de juges prescrit par la loi, Crim., 30 octobre 1973, pourvoi n° 72-93.424, Bull. Crim.1973, n°391, ou lorsque deux compositions différentes se réunissent pour la même affaire Crim., 9 avril 1976, pourvoi n° 75-92.804, Bull. Crim. 1976, n°109

1 5 Par exemple, en cas de fausse application d'une loi d'incrimination, Crim., 24 octobre 1988, pourvoi n° 87-91.203, Bull. crim. 1988 N° 360 ou d'incompétence au sens de l'article 599 du CPP, Crim., 29 mars 1971, pourvoi n° 70-91.194, Bull. Crim.1971, n°112. V. Jacques Boré et Louis Boré, *Op. cit.*, §112.115.

1 6 Jacques Boré et Louis Boré, *Op. cit.*, §142.31.

1 7 Jacques Boré et Louis Boré, *Op. cit.*, §142.11. et 142.12.

1 8 Crim., 18 mai 2010, n°09-83.156

1 9 Crim., 18 mai 2010, pourvoi n° 09-83.156, Bull. crim. 2010, n° 88.

2 0 Crim., 1 septembre 2015, pourvoi n° 15-83.533, Bull. crim. 2015, n° 186.

2 1 Article L411-1 du Code de l'organisation judiciaire.

2 2 Cour de cassation, Présentation, « Le rôle de la Cour de cassation ».

23 « *Constitue un moyen de pur fait la simple discussion des éléments de fait sur lesquels les juges du fond se sont souverainement prononcés au vue des éléments de la cause* » (Sommaire). Crim., 17 janvier 1962, pourvoi n°92-532.61, Bull. crim. 1962, no 39.

24 Crim., 23 mai 1964, pourvoi n°64-90.544 , Bull. crim. 1964 no 170.

25 Jacques Boré et Louis Boré, *Op. cit.*, §111.09. V. Crim. 2 févr. 1966, no 65-92.831 , Bull. crim. no 29.

26 V. Pierre Guerder, « Le contrôle de la Cour de cassation en matière de délits de presse », Gaz. Pal Rec. 1995, doctr. p. 589.

27 Par exemple : Crim., 27 octobre 1966, pourvoi no 90.616/65, Bull. crim. 1966 no 241, Crim., 24 novembre 1987, pourvoi n° 87-81.379, Bull. crim. 1987 n° 428 ou Crim., 14 octobre 2003, pourvoi n° 02-87.994, Bull. crim. 2003, n° 188.

28 Pierre Guerder, « *Presse : procédure – Voies de recours* », Répertoire de droit pénal et de procédure pénale, septembre 2011, §806-811.

29 *Ibid.*, §810.

30 Livre III : Des voies de recours extraordinaires ; Titre Ier : Du pourvoi en cassation ; Chapitre III : Des ouvertures à cassation ; Articles 591 et suivants du CPP et l'article 607 du CPP.

31 V. Crim., 1 juin 2005, pourvoi n° 04-87.757, Bull. crim. 2005, n° 167.

32 « *L'annulation par la juridiction administrative d'un acte administratif implique que cet acte est réputé n'être jamais intervenu et prive de base légale la poursuite engagée pour violation de cet acte. Encourt la censure, l'arrêt qui retient qu'au moment du contrôle routier la décision administrative de retrait du permis de conduire était en vigueur* » (Sommaire). Crim., 21 novembre 2007, pourvoi n° 07-81.659, Bull. crim. 2007, n° 290.

33 « *L'action civile irrégulièrement engagée ne peut mettre en mouvement l'action publique. Dès lors, si plus d'une année s'est écoulée entre la constatation de la contravention et celle du pourvoi, la Cour de cassation constate que les faits sont prescrits et qu'il n'y a pas lieu à renvoi* » (Sommaire). Crim., 5 avril 1965, pourvoi no 91.937/64, Bull. crim. 1965 no 108.

34 Jacques Boré et Louis Boré, « Pourvoi en cassation – Renvoi de cassation », Répertoire de droit pénal et de procédure pénale, avril 2013, §526-532.

35 « *La cassation est prononcée sans renvoi dès lors que la Cour de cassation trouve dans les constatations des juges du fond les éléments lui permettant de réparer l'omission et de mettre fin à cette partie du litige* » - Crim., 14 octobre 1981, pourvoi n° 80-93.751, Bull. Crim. 1981, n° 274.

36 « *Dès lors que la Cour de cassation trouve dans les constatations des juges du fond les éléments de fait lui permettant d'appliquer la règle de droit méconnue par l'arrêt attaqué, elle peut, en vertu de l'article L 131-5 du Code de l'organisation judiciaire casser sans renvoi et mettre fin au litige* » - Crim., 19 mars 1980, pourvoi n° 79-91.396, Bull. Crim. n°095 ; En matière de prise en compte des charges salariales pour le calcul d'une indemnité d'accident du travail, Crim., 6 novembre 1991, pourvoi n° 90-84.489, 90-84.489, Bull. crim. 1991 n° 396.

37 Crim., 17 décembre 2003, pourvoi n° 02-87.524 (diffusé).

38 Crim., 16 janvier 1997, pourvoi n° 96-80.952, Bull. crim. 1997, n° 15 : « *Il n'y a pas lieu à renvoi lorsque la Cour de Cassation met fin à la procédure en appliquant la règle de droit appropriée conformément à l'article L. 135-5 du Code de l'organisation judiciaire. Tel est le cas lorsque la juridiction de jugement a excédé le maximum de l'amende légalement encourue en application de l'article 1745 du Code général des impôts* » ; Crim., 29 février 2000, pourvoi n° 97-86.706, Bull. crim. 2000, n° 90 : « *L'application de l'article 612-1 du Code de procédure pénale ne peut conduire à aggraver la peine prononcée contre un condamné qui ne s'est pas pourvu. Si la cour d'assises avait plénitude de juridiction pour juger l'accusé renvoyé devant elle, l'arrêt doit, néanmoins, être annulé en ce qu'il a aggravé la peine prononcée contre le*

demandeur qui ne s'était pas pourvu. L'annulation a lieu sans renvoi, la Cour de Cassation fixant la durée de la peine de réclusion criminelle à celle prononcée par la cour d'assises initiale dont l'arrêt a été cassé. Et il y a lieu, en application de l'article 612-1 du Code de procédure pénale, d'étendre les effets de l'annulation à l'égard d'un autre condamné qui ne s'est pas pourvu et dont la condamnation a été également aggravée par la cour d'assises de renvoi » ; Crim., 8 novembre 2006, pourvoi n° 05-85.271 : « *L'arrêt prononcé le 9 mars 2005, condamnant le prévenu, déclaré coupable de banqueroute, à vingt ans de faillite personnelle, qui n'a pas acquis force de chose jugée le 1er janvier 2006, date d'entrée en vigueur de la loi de sauvegarde des entreprises du 26 juillet 2005, doit être annulé et la durée de cette mesure doit être fixée à quinze ans, en application des dispositions de l'article L. 653-11, alinéa 1er, du code de commerce résultant de ladite loi* ».

Sur ce plan, Jacques Boré et Louis Boré sont critiques : « *On ignorait que le juge de cassation avait le pouvoir de modifier le quantum de la peine. Il semble, au contraire, que le principe d'individualisation en fait une question de pur fait qui relève de la seule compétence des juges du fond, et il n'est pas certain que, si ceux-ci avaient eu conscience de la limite posée par le législateur, ils auraient condamné le prévenu au maximum légal* » - Jacques Boré et Louis Boré, Répertoire de droit pénal et de procédure pénale, *Op. cit.*, §527-532.

Germany - *Federal Court of Justice*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

Germany is a federal state. Therefore not all appeals can be lodged to the Supreme Court (Federal Court of Justice, FCJ). Sec. 135 para. 1 of the German Courts Constitution Act (CCA) rules that the Federal Court of Justice shall have jurisdiction for hearing and ruling on the legal remedy of appeal on points of law only (Revision) against judgments of the Higher Regional Courts at first instance and against judgments of the Regional Courts at first instance, unless the jurisdiction of the Higher Regional Courts has been established, which is governed by Sec. 121 CCA.

Sec. 333 of the German Code of Criminal Procedure (CCP) rules that an appeal on law shall be admissible against judgments of the criminal divisions and of the criminal divisions with lay judges and against judgments of the Higher Regional Courts pronounced at first instance. Sec. 341, 344 f. CCP provide provisions about form and time limits for the appeal.

An English translation of the relevant provisions can be found here: http://www.gesetze-im-internet.de/englisch_gvg/index.html (CCA) and http://www.gesetze-im-internet.de/englisch_stpo/index.html (CCP) .

In short words: the admissibility of the appeal to the FCJ is not depending on the penalty or measurement issued by the lower court. Solitary ground for the appeal is a violation of the law. A violation of the law can either be found in applying substantial law or procedural law. The judgements reasoning is the basis of the consideration of the FCJ. The admissibility of the appeal is checked in advance.

2. - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

The proceedings before the FCJ only deal with the compliance of the lower courts' decisions with the relevant legislation. In the event that a panel wishes to deviate from the decision of another panel on a legal issue the Grand Panel for Criminal Matters shall

decide, see Section 132 CCA (http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0666).

3. - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

In General, the FCJ quashes the contested judgment insofar as the appeal on law is considered well-founded, see Section 353 CCP (http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2062). In certain cases, Section 354 CCP (http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2065) provides the possibility for the FCJ to decide on the merits by itself.

Hungary - *Supreme Court*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

Under Hungarian criminal procedural law, petitions for legal remedy may not be subjected to any admissibility process. In Hungary, there is no such filtering mechanism.

Act no. XC of 2017 on the Code of Criminal Procedure (hereinafter referred to as the Code of Criminal Procedure) provides detailed rules as to what kind of court decisions may be appealed within a given deadline, how an appeal may be submitted and what types of court decisions may not be challenged, hence, no additional (admissibility) examination is allowed by virtue of the applicable piece of legislation.

A court decision or measure touching upon the accused person's personal liberty may be challenged before the Curia (Supreme Court) of Hungary either by way of an ordinary petition for remedy (appeal) or through an extraordinary petition for remedy (petition for judicial review, remedy in the interest of legality).

Pursuant to section 583, subsection (2) of the Code of Criminal Procedure, a petition for remedy may also be submitted on the grounds connected only to the impugned court decision's reasoning.

2. - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

The Curia of Hungary is entitled both to check on the merits and to assess the compliance of the lower courts' decisions with the relevant legislation. An ordinary petition for remedy (appeal) may be lodged with the aim of requesting the Curia of Hungary to carry out a last instance examination on the merits of a non final court decision. This is the case when the Curia of Hungary acts as a court of third instance. An extraordinary petition for remedy (petition for judicial review), on the other hand, serves to request the Curia of Hungary to assess the compliance of the lower courts' decisions with the relevant legislation. Section 648, points a) c) of the Code of Criminal Procedure give an exhaustive list of the grounds on the basis of which the parties may submit a petition for judicial review to the Curia of Hungary, such grounds include the followings: breach of criminal substantive law, breach of criminal procedural law, a decision rendered

by the Constitutional Court of Hungary or by a human rights body established by an international treaty.

On the one part, the Curia of Hungary is empowered to harmonise the courts' case law and establish principles of law mainly within the framework of the so called uniformity decision procedure (section 670 of the Code of Criminal Procedure). Sections 32 44 of Act no. CLXI of 2011 on the Organisation and Administration of the Courts of Hungary (hereinafter referred to as the Courts' Organisation and Administration Act) provide detailed rules on the conducting of the uniformity decision process and on the delivery of uniformity decisions. On the other, section 31, subsection (1) of the Courts' Organisation and Administration Act stipulates that the Curia of Hungary shall publish decisions and rulings of principle which are to be followed by the lower instance courts. If one of the Curia's adjudicating panels wishes to deviate from their findings, then such a panel is obliged to motion for the launch of a uniformity decision procedure.

3. - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

It follows from the above that the Curia of Hungary is given full decision making powers. If the Curia of Hungary delivers a final on the merits decision as a court of third instance, then it has full competence as regards the assessment of the accused person's guilt and the application of criminal sanctions. In the event that the Curia of Hungary acts as a judicial review court and the petition for judicial review argues that an unlawful criminal sanction has been imposed on the accused by the lower instance court's final decision, then the Curia of Hungary is entitled to revise the impugned court decision and to render a lawful decision instead [section 662, subsection (2) of the Code of Criminal Procedure]. As a special rule, a new and lawful decision that has been delivered as a result of a remedy in the interest of legality (sections 666 669 of the Code of Criminal Procedure) should not be more detrimental to the accused person than the impugned decision. In such a case, the Curia of Hungary may only establish the contested decision's unlawfulness.

Italy - *Court of Cassation*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

An appeal to the Court of Cassation [*ricorso per cassazione*] is admissible, in criminal matters, against any judgment and any measure relating to personal freedom (Article 111, paragraph (7), of the Italian Constitution); the law also provides that an appeal may be submitted against measures concerning the seizure of items or property for precautionary reasons or for obtaining evidence (Article 325 code criminal procedure).

In general, Article 606, paragraph (1), code criminal procedure provides that an appeal to the Court of Cassation is admissible on the following grounds: (a) the lower court exercised a power granted by law to legislative or administrative bodies or not allowed to public authorities; (b) failure to comply with or misapplication of criminal law or other legislation which must be considered in the application of criminal law; (c) failure to comply with any procedural rule entailing a penalty of nullity, exclusion of evidence, inadmissibility or expiry; (d) failure to gather decisive evidence, when a party requested its gathering even during the trial evidentiary hearing [*istruzione dibattimentatle*], in the latter case it must exclusively concern evidence to the contrary of the acts in respect of which evidence in support or against has been brought; (e) the reasoning of the judgment is lacking, contradictory or manifestly illogical, when the defect results from the text of the contested decision or from other documents of the proceedings specified in the grounds of the appeal to the Court of Cassation.

Some limitations however apply. In fact, the Court of Cassation has ruled that when the appeal for cassation concerns the seizure of items or property carried out for precautionary reasons or for obtaining evidence (Article 325 code criminal procedure), the language used in Article 325 code criminal procedure should be read as entailing inadmissibility of any grounds based on the contradiction or manifest illogicality of the reasoning in the judgment, save the case of a merely apparent reasoning. Moreover, pursuant to Article 606, paragraph 2-*bis,* code criminal procedure, in the case of a judgment of the court of appeal on an appeal brought against a judgment of a Justice of the Peace [*giudice di pace*], the appeal to the Supreme Court of Cassation may be made only in the cases indicated in letters (a), (b) and (c) of Article 606, paragraph 1, code criminal procedure. Under Article 608, paragraph 1-*bis*, code criminal procedure, the same

limitations apply to an appeal for cassation brought by the Public Prosecutor [*pubblico ministero*] concerning an appellate judgment confirming an acquittal given at first instance.

The law does not provide for any prior checking of the admissibility of an appeal for cassation.

However, Article 610, paragraph 5-*bis*, code criminal procedure, provides for the cases which may be declared inadmissible «with no procedural formality», i.e. without a hearing or without hearing the parties. Those cases concern appeals for cassation that: (a) are submitted by a party that is not entitled to do it; relate to a measures that the law provides cannot be appealed against; are not submitted in compliance with Articles 582 or 583 code criminal procedure; are submitted beyond the time limits set by Articles 585 e 586 code criminal procedure; or are subsequently withdrawn; (b) concern a judgment given in first or second instance proceedings that have applied the «patteggiamento» [plea agreement] procedure, irrespective of their grounds for inadmissibility. The declaration of inadmissibility is made by means of an «ordinanza» [order] (not of a judgment) by a bench of five justices of the Court of Cassation, one of which is the President of the bench.

Moreover, the code of criminal procedure, in Articles 610, paras (1) and (5) and 611, provides that any appeal for cassation which is seemingly inadmissible for other reasons (e.g., because it is manifestly unfounded, or based on unspecific grounds, or implying a reassessment of the evidence of the case) is dealt following a simplified procedure, under which the parties are notified of this at least thirty days before the relevant decision is given, and can take part in the procedure only through written statements [*memorie scritte*]. The decision takes the form of an «*ordinanza*» [order] (not of a judgment) given by a bench of five justices of the Court of Cassation, one of which is the President of the bench. In any case, the bench can decide that there are no grounds for declaring the inadmissibility of the appeal for cassation, and therefore it can order that the case be dealt following the ordinary procedure.

In order to assess preliminarily if an appeal for cassation can be dealt following the ordinary procedure or the simplified procedure specified in Articles 610, paras (1) and (5) and 611 code criminal procedure, or the even more simplified procedure specified in Article 610, paragraph (5-*bis*), code criminal procedure, each branch (civil or criminal) of the Court of Cassation does this through its «sorting office» [*ufficio spoglio*] ,which is made up of justices of the Court of Cassation, on delegation by the First President of the Court. The justices of the «sorting office» examine the appeals for cassation as soon as they are received at the Registry of the Court and establish the mode of dealing with them (ordinary procedure or either of the simplified procedures).

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

The proceedings before the Supreme Court of Cassation concern only the compliance with the law [*legittimità*] of the lower courts' decisions. Evidence of this is clear from the list of the grounds for cassation in Article 606, paragraph (1), code criminal procedure. Therefore, as regards the reconstruction of the facts [*ricostruzione dei fatti*], the Court of Cassation does not appraise directly the evidence acquired during the trial before the courts of merits, but it examines the reasoning of the contested judgment in order to assess whether it infringed any legal rule, violated manifestly some logical principle or, for example, omitted to evaluate evidence that had been acquired and which could have potentially led to a different judgment.

Given that the Court of Cassation examines the legality of the contested judgment, all its decisions are based on a principle of law. However, the Court is not bound to state formally the relevant principle, except in some specific cases indicated in Article 173 of the enforcement provisions [*disp. att.*] of the code criminal procedure. That is to say: (a) when it delivers a judgment of annulment and remittal [*annullamento con rinvio*] of the contested decision «it enounces specifically the principle of law that the court of remittal must comply with» (paragraph 2); (b) when it decides in Grand Chamber [*Sezioni unite*], «it always enounces the principle of law on which its decision is based» (paragraph 3).

The Court of Cassation rulings are normally given by a bench of five justices from the same Chamber (the Court of Cassation has six criminal Chambers, plus a Chamber which deals with cases with the simplified procedure provided in Articles 610, paragraphs (1) and (5), code criminal procedure and 611 code criminal procedure, and in Article 610, paragraph 5-*bis*, code criminal procedure; this Chamber is divided into six sub-Chambers, each of which is made of justices from one of the other six criminal Chambers)

The First President of the Court of Cassation assigns a case to the Grand Chamber in the following cases: (a) «when the issues raised are of special importance or when it is necessary to resolve diverging decisions given by several Single Chambers (Article 610, paragraph 2, code criminal procedure); (b) when a Chamber, sitting in a bench of five (a president and four justices), declares by means of an *ordinanza* [order] that «the point of law examined by it has led, or could lead, to a jurisprudential conflict [*contrasto giurisprudenziale*]» (Article 618, paragraph 1, code criminal procedure); (c) when a Chamber, sitting in a bench of five (a president and four justices), declares by means of an *ordinanza* [order] that «it finds that it does not share the principle of law ruled by the Grand Chamber» which is applicable to the case before it (Article 618, paragraph 1-*bis*, code

criminal procedure). The First President of the Court of Cassation is not bound by the order by which the Single Chamber remits the case to the Grand Chamber and therefore it can send the case back to the Single Chamber if it deems that there is no jurisprudential conflict, not even a potential one (Article 172 disp. att. code criminal procedure).

The Court of Cassation Grand Chamber is made up of nine justices from the criminal Chambers of the Court of Cassation, who are chosen according to predetermined criteria; the bench is presided over by the First President or, by delegation, the Associate President [Presidente Aggiunto] or the President of one of the Chambers of the Court of Cassation (Article 170 of the enforcement provisions [*disp. att.*], code criminal procedure).

As regards data: (a) the criminal Grand Chamber decides around forty cases per year; (b) the total number of cases decided by all the criminal Chambers, including the Chamber following the simplified procedure, is around 56,000/58,000 per year; c) the number of cases decided by the Chamber following the simplified procedure is around 20,000 per year.

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

As we have already mentioned, the Court of Cassation carries out solely a checking of the compliance with the law of the case submitted to it, and therefore it checks whether the contested decision complies with the criminal law and procedure, and whether its reasoning is complete and follows a logic line.

The typical decisions of a case by the Court of Cassation are either a declaration that the case is inadmissible [*declaratoria di inammissibilità*] or the dismissal of the appeal for cassation [*rigetto del ricorso*] and consequently it affirms [*conferma*] the contested decision, or declares its annulment [*annullamento*], with or without remittal [*rinvio*] to the court of merits.

The code of procedure also provides for decision-making powers of the Court of Cassation over the subject-matter of the case, which all require that they must not entail any assessment or evaluation on the merits of the case.

First, the Court of Cassation can amend the errors of law in the reasoning of the contested decision as well the errors in the indication of the legislation when those do not cause the annulment of the decision (Article 619, paragraph (1), code criminal procedure).

The Court of Cassation can also deliver a judgment of annulment without remittal when it deems that the case does not require any further assessment of the facts; when the Court itself can order all the necessary measures; and, in any other case when it deems that

the remittal to the court of merits is superfluous. (Article 620, paragraph (1) letter (l), code criminal procedure).

As regards the re-determination of the punishment, the Court of Cassation can rectify the type or amount of punishment in case of an error of denomination or of calculation of it, or when a law more favourable to the sentenced person enters into force, provided this does not require a new assessment of the facts of the case (Article 619, paragraphs (2) and (3), code criminal procedure). Indeed, Law no. 103/2017 has given to the Court of Cassation the power to re-determine the punishment when this can be based on the decision of the court of merits (Article 620, paragraph 1, letter (l), code criminal procedure).

The Grand Chamber, on a request to specify what conditions are necessary for activating the Court of Cassation's decision-making powers, clarified that, given that the Court only reviews the legality of a judicial decision, it may deliver a judgment of annulment without remittal if it deems that the remittal is superflous and if - also based on discretionary evaluations – it can decide the case based on the elements of fact that have already been ascertained by the court of merits, or on the latter's decisions since no further assessment is necessary. In other words, the Court of Cassation, in the exercise of its decision-making powers and/or in the re-determination of the punishment, cannot ignore the outcome of the assessments made by the court of merits, nor the reconstruction of the time-line and facts and the reasoning contained in the contested decision. Nevertheless, within these strict limits, the Court of Cassation has the faculty to exercise what can be described as a «restrained» discretion, since it is framed by the limitations imposed by the judgment of the court of merits.

Latvia - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

1. The Supreme Court of the Republic of Latvia is a court of cassation. Section 569 of the Criminal Procedure Law provides for cases in which it is possible to lodge a cassation complaint and protest. The lodging of a cassation complaint is not limited to whether the accused has been sentenced to imprisonment. Section 572 of the Criminal Procedure Law applies to the content of a cassation complaint and protest. Whereas, Section 573 of the Criminal Procedure Law regulates the procedure by which it is decided to initiate cassation proceedings. Section 5731 of the Criminal Procedure Law provides grounds for refusing to initiate cassation proceedings.

Certain categories of cases do not provide for appeals against a court decision under appellate procedure, but it is stipulated that such decisions may be appealed under cassation procedure, for example, a judgment of a first instance court rendered under agreement procedure, execution of a sentence adopted abroad in Latvia.

In addition, certain categories of cases are subject to review by the Supreme Court, namely, extradition of a person to a foreign country or to another Member State of the European Union.

Criminal Procedure Law

Chapter 54 Examination of a Case According to Cassation Procedures

Section 569. Appeal in Accordance with Cassation Procedures

(1) An appeal in accordance with cassation procedures is the submission of a written cassation protest or complaint to the Supreme Court regarding the legality of a ruling of an appellate court, which has not yet entered into effect, for the purpose of achieving the revocation thereof completely or in a part thereof, or the modification thereof due to legal reasons.

(2) A ruling of a court of first instance that was made during agreement proceedings and has not yet entered into effect may be appealed in accordance with the procedures, and for the purpose, specified in Paragraph one of this Section.

(3) A cassation court shall not evaluate evidence in a case de novo.

Section 572. Content of a Cassation Complaint and Protest

A cassation complaint or protest shall include a justification of the requirements expressed therein with a reference to the violation of The Criminal Law or of the norms of this Law, as well as a reasoned request regarding examination of a case in oral proceedings in a court hearing, if the submitter of the complaint or protest so wishes.

[27 September 2018]

Section 573. Procedures for Initiating Cassation Proceedings

(1) The legality of a ruling shall be examined in accordance with cassation procedures only in the case where the action expressed in the cassation complaint or protest has been justified with a violation of The Criminal Law or a substantial violation of this Law.

(2) The matter of examining a ruling in accordance with cassation procedures shall be decided by the court in the composition of three judges. The composition of the court and time when the matter of initiating cassation proceedings will be decided shall be notified to the person who submitted the complaint or protest, and also to the person whose rights and interests have been affected by the complaint or protest, explaining the right to raise an objection within seven days.

(3) Initiation of cassation proceedings shall be rejected by taking an unanimous decision in the form of a resolution where the reasons for the rejection shall be indicated.

(4) If the opinion of judges on the initiation of cassation proceedings differ or all judges believe that the matter should be examined in accordance with cassation procedures, the decision on the initiation of cassation proceedings shall be taken in the form of a resolution.

(5) The decision referred to in Paragraphs three and four of this Section shall not be subject to appeal.

[27 September 2018]

Section 573.1 Grounds for the Refusal to Initiate Cassation Proceedings

(1) A court refuses to initiate cassation proceedings if the cassation complaint or protest does not meet the requirements laid down in Sections 569, 571, 572 and Section 573, Paragraph one of this Law or the cassation complaint or protest has been submitted regarding a court ruling which shall not be subject to appeal in accordance with the Law.

(2) A court may refuse to initiate cassation proceedings in the following cases:

1) case law of the Supreme Court has been established in the issues of application of legal norms indicated in the cassation complaint or protest, and the appealed ruling conforms to it;

2) after evaluation of the arguments included in the cassation complaint or protest, no concerns on the legality of the appealed ruling have arisen and the matter to be examined is not relevant for the formation of case law.

[27 September 2018]

Chapter 66 Extradition of a Person to a Foreign Country

Section 705.1 Decision to Extradite a Person to a Foreign Country

(1) After receipt of the decision of a prosecutor on admissibility of the extradition and examination materials the Prosecutor General shall take one of the following decisions:

1) to extradite a person to a foreign country;

2) to refuse to extradite a person;

3) to revoke the decision of the prosecutor on admissibility of the extradition and to transfer the extradition request for additional examination.

(2) A person to be extradited may appeal the Prosecutor General's decision on admissibility of the extradition to a foreign country to the Supreme Court within 10 days from the day of receipt thereof. If the decision is not appealed, it shall enter into effect.

(3) A decision of the Prosecutor General to refuse to extradite a person or a decision of the Prosecutor General to extradite a person to a foreign country which has entered into effect, shall be notified by the Office of the Prosecutor General to the relevant person and foreign country without delay.

(4) As soon as a decision to refuse to extradite a person is taken, the Office of the Prosecutor General shall release the person from arrest without delay or revoke another security measure not related to deprivation of liberty.

(5) A decision of the Prosecutor General to extradite a person to a foreign country which has entered into effect shall be handed over by the Office of the Prosecutor General to the State Police for execution.

[18 February 2016]

Chapter 69 General Provisions for the Execution in Latvia of a Punishment Imposed in a Foreign Country

Section 760. Determination of a Punishment to be Executed in Latvia

(1) After taking of the decision referred to in Section 759, Paragraph one, Clause 1 of this Law a judge shall determine a punishment to be executed in Latvia in a written procedure, if a person convicted in a foreign country and a prosecutor does not object thereto.

(2) The factual circumstances established in a court ruling of a foreign country and the guilt of a person shall be binding to a court of Latvia.

(3) The punishment determined in Latvia shall not deteriorate the condition of a person convicted in a foreign country, however, it shall conform to the punishment determined in the relevant foreign country as much as possible.

(4) Concurrently with a notification regarding the decision referred to in Section 759, Paragraph one, Clause 1 of this Law a judge shall inform a person convicted in a foreign country and a prosecutor regarding the right, within 10 days from the day of receipt of the notification, to submit objections against the determination of the punishment to be executed in Latvia in a written procedure, to submit recusation for a judge, to submit an opinion on the punishment to be executed in Latvia, as well as on the day of availability of the decision.

(5) If a person convicted in a foreign country is serving a punishment of deprivation of liberty in the country that submitted the request, the relevant person shall be informed regarding the right referred to in Paragraph four of this Section immediately after transfer thereof to Latvia.

(6) If a person convicted in a foreign country or a prosecutor has submitted objections against the determination of the punishment to be executed in Latvia in a written procedure, a judge shall take a decision in accordance with the procedures of Section 651 of this Law. If a person convicted in a foreign country is under arrest in the foreign country or is serving a punishment of deprivation of liberty in the relevant foreign country, and an issue on determination of the punishment to be executed in Latvia, which is not related to deprivation of liberty, is being decided, technical means shall be used for ensuring of the participation or temporary transfer of the person to Latvia shall be requested.

(7) A person convicted in a foreign country or a prosecutor may appeal a decision of a judge on determination of the punishment to be executed in Latvia to the Supreme Court within 10 days from the day of availability of the decision.

(8) A complaint shall be examined according to the same procedures as a cassation complaint or protest submitted in criminal proceedings taking place in Latvia, and in such extent as allowed by the international agreements binding to Latvia and this Chapter.

(9) If a decision of a judge on determination of the punishment to be executed in Latvia has not been appealed within the time period specified in Law or a decision has been appealed and the Supreme Court has left it in effect, the decision shall be executed in accordance with the procedures referred to in Section 634 of this Law. The request of a foreign country shall be attached to the decision.

[19 December 2013]

Chapter 70 Execution in Latvia of a Punishment Related to the Deprivation of Liberty Imposed in a Foreign Country

Section 769. Determination of the Punishment of Deprivation of Liberty to be Executed in Latvia

(1) The punishment of deprivation of liberty to be executed in Latvia shall be determined in accordance with the procedures laid down in Section 760 of this Law.

(2) If the type and level of punishment specified in a court of the foreign country does not conform to the punishment specified in The Criminal Law for the same offence, a court shall amend it according to the punishment, which is provided for in The Criminal Law for the same criminal offence, complying with the following conditions:

1) the type and level of the punishment shall not exceed the maximum punishment specified in The Criminal Law for the same offence;

2) the type and level of the punishment shall conform as much as possible to that specified in the judgment;

3) the minimum limit of the punishment specified in The Criminal Law is not of significance.

(3) A court decision to determine the punishment of deprivation of liberty to be executed in Latvia shall determine:

1) the continuation of serving the punishment and the punishment to be served;

2) the inclusion of the time spent under arrest and in prison, which has not been taken into account in the judgment of the foreign country;

3) the part of additional punishment to be executed, if The Criminal Law does not provide for such additional punishment.

(4) The punishment of deprivation of liberty imposed in a foreign country shall not be substituted with a fine.

(5) If a person has not been punished with a criminal punishment in a foreign country due to mental disorders or mental disability, however, he or she has been applied other measures related to deprivation of liberty, a court shall decide on determination of compulsory measures of a medical nature to such person, complying with that specified in Section 603, Paragraph one of this Law.

Chapter 71 Execution in Latvia of a Ruling Made in a European Union Member State, by which a Punishment of Deprivation of Liberty has been Imposed

Section 779. Recognition and Execution of a Ruling on the Punishment of Deprivation of Liberty Rendered in a European Union Member State

(1) A judge of a district (city) court shall take a decision on recognition and execution of a ruling on the punishment of deprivation of liberty in accordance with the procedures referred to in Section 759 of this Law and the punishment to be executed in Latvia shall be determined in accordance with the procedures referred to in Section 760 of this Law.

(2) A court may suspend taking of a decision on the recognition and execution of a ruling on the punishment of deprivation of liberty if the certification of a special form is incomplete or does not conform to the judgment, and to specify a time period, by which the certification should be updated by the European Union Member State. A court may suspend taking of a decision on recognition and execution of a ruling on the punishment of deprivation of liberty also in the case referred to in Section 742 of this Law, if it is necessary to request a consent of the European Union Member State.

(3) Takeover of a person convicted in the European Union Member State shall take place in accordance with the procedures laid down in Section 768 of this Law.

2. - *The court of cassation shall not reassess the facts and evidence of the case. An appeal under cassation procedure means filing of a written cassation protest or complaint before the Supreme Court against the lawfulness of a decision of an appellate court that has not yet entered into force, seeking its annulment in whole or in part, or its amendment due to legal reasons.*

If further clarification is required from the persons entitled to participate in the proceedings or, in the opinion of the Supreme Court, the case in question may be of particular importance in the interpretation of the provisions of the law, the hearing of the case in the courtroom shall be determined.

It is not within the jurisdiction of the Plenary Session of the Supreme Court to hear individual cases.

Law of the Republic of Latvia On Judicial Power

Section 49. The Plenary Session and its Competence

(1) The Plenary Session is a general meeting of judges of the Supreme Court convened by the Chief Judge of the Supreme Court.

(2) The Plenary Session shall discuss current norms of law interpretation issues.

(3) [3 April 2008]

(4) The Plenary Session shall give an opinion concerning whether there is a basis for the removal of the Chief Justice of the Supreme Court, or the dismissal of the Prosecutor General, from office.

(5) The Plenary Session shall select the candidates for the position of a judge of the Supreme Court from among the judges of the Republic of Latvia in cases specified in the Constitution Court Law.

(6) The Plenary Session shall elect a member of the Central Election Commission from among the judges.

(7) The Plenary Session shall elect a member of the Judicial Council from among the judges of the Supreme Court.

(8) The Plenary Session shall elect six members of the Disciplinary Court for five years and approve the chairperson of the Disciplinary Court from among the members.

[15 October 1998; 31 October 2002; 3 April 2008; 30 April 2009; 3 June 2010; 25 October 2018]

3. - ***When deciding a case under cassation procedure, it is not within the jurisdiction of the Supreme Court to determine a new sentence for an accused person arising from the provision that the Supreme Court does not reassess the facts and evidence of the case. If the Supreme Court finds that the basic principles of the Criminal Law on determination of sentence have not been complied with, or other violations regarding the determination of sentence are committed, it annuls the decision of the lower court and remits the case to a lower court for reconsideration.***

If the Supreme Court finds that an infringement of the right to complete criminal proceedings within a reasonable time is committed, it shall decide, under the provisions of the Criminal Law, to reduce the sentence imposed on the accused.

The Criminal Law

Section 49.1 Determination of Punishment if the Rights to Termination of Criminal Proceedings within Reasonable Time Period has not been Observed

(1) If the court determines that the rights of a person to termination of criminal proceedings within reasonable time period have not been observed, it may:

1) take this circumstance into consideration when determining the punishment and mitigate the punishment;

2) determine a punishment which is lower than the minimum limit provided for the relevant criminal offence by the law;

3) determine another, lesser type of punishment than provided for the relevant criminal offence by the law.

(2) If the court determines that the rights of a person to the termination of criminal proceedings within reasonable time period have not been observed and the person has committed a crime for which life imprisonment is provided for in the sanction of the Special Part of The Criminal Law, the court may determine a deprivation of liberty for twenty years instead of life imprisonment.

[21 October 2010; 1 December 2011]

Luxembourg - *Cour Supérieure de Justice*

1 - *En matière pénale, le recours devant la Cour suprême est-il recevable contre tous les arrêts et jugements relatifs à la liberté individuelle? Quels sont les moyens selon lesquels un recours peut être considéré recevable? En particulier, un recours est-il également recevable au motif d'un moyen erronée ou imparfait ou absent et, dans l'affirmative, dans quelles limites? Un contrôle préalable de la recevabilité du recours est-il prévu?*

En matière de liberté individuelle, il y a lieu de distinguer entre la période d'instruction d'une affaire, c'est-à-dire avant une condamnation définitive et la période après une condamnation définitive.

Dans le premier cas une personne est détenue en vertu d'un mandat de dépôt émis par un juge d'instruction.

Contre un mandat de dépôt, l'inculpé peut à tout moment de la procédure présenter une demande de mise en liberté provisoire. La chambre du conseil du tribunal dont dépend le juge d'instruction statue par une ordonnance dans les trois jours de sa saisine.

L'appel contre ces ordonnances de la chambre du conseil est toujours possible et c'est la chambre du conseil de la Cour d'appel de Luxembourg qui se prononce sur ces appels.

Pour répondre à votre première question, un recours en cassation contre les arrêts rendus en matière de mise en liberté provisoire n'est pas possible immédiatement.

Un recours en cassation contre les arrêts d'instruction n'est ouvert qu'après l'arrêt ou le jugement définitif.

Un recours immédiat contre une décision de rejet d'une demande de mise en liberté provisoire est dès lors irrecevable.

Il n'existe cependant pas de contrôle préalable de la recevabilité des recours en cassation.

En cas d'un recours contre un tel arrêt, la Cour de cassation doit se réunir pour statuer.

2 - *Le jugement par la Cour suprême a-t-il le caractère d'un contrôle de dernier ressort sur le fond ou d'un contrôle de droit pur? Comment la Cour établit-elle le principe de droit? Dans les cas les plus pertinents ou en cas de conflit, est-il prévu qu'une décision soit prise dans les assemblées plénières ou en chambres mixtes?*

La Cour de cassation n'exerce qu'un contrôle de pur droit.

Elle est sans compétence pour constater les faits reprochés au prévenu.

Le Luxembourg ne dispose que d'une Cour de cassation avec cinq conseillers titulaires, siégeant dans toutes les affaires.

Notre Cour de cassation n'est pas divisée en chambres spécialisées, civiles, commerciales ou pénales. Notre procédure ne connaît pas des audiences en chambre mixte ou en assemblée plénière.

3 - *Quels sont les pouvoirs de décision de la Cour suprême? En particulier, la Cour suprême peut-elle recalculer la peine à appliquer et, le cas échéant, dans quelle mesure?*

La Cour de cassation ne contrôle que la correcte application du droit et ne statue plus sur le fond des affaires.

La Cour de cassation ne saurait dès lors procéder à un recalcul d'une peine prononcée par la Cour d'appel.

Il n'est fait qu'un contrôle de la légalité de la peine prononcée.

Malta - *Courts of Justice*

1 - ***In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?***

2 - ***Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?***

3 - ***What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?***

According to our law, all decisions of the Criminal Court can be appealed to the Court of Criminal Appeal which is the superior Court. We do not have a Corte di Cassazione. There is no filtering and the Court of Criminal Appeal has to decide all appeals although the appellant may be fined for frivolous or vexatious appeals,

As an appeal may be made on every issue the Court of Appeal has to deal with all the issues raised in the application of appeal. (we call the application "rikors"). The Court Appeal may vary the punishment if it deems fit but always within the parameters imposed by law. It is however unusual for the Court of Appeal to uphold the appeal on matters of fact unless it feels that a manifest injustice has been made by the lower Court.

Netherlands - *Supreme Court*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the ground connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

According to section 427, par. 1 of the Criminal Code of Procedure of the Netherlands (CCP), appeal to the Supreme Court ('appeal in cassation') against decisions made by the Courts of Appeal concerning felonies is admissible for the public prosecutor's office as well as the accused. The sanction that has been imposed does – when it concerns felonies – not have influence on the admissibility of the appeal.

When the Court of Appeal decision concerns misdemeanors, par. 2 of section 427 CCP provides that appeal to the Supreme Court is admissible for the public prosecutor's office as well as the accused, unless:

a) Section 9a of the Criminal Code of the Netherlands has been applied, which means the accused has been convicted, but no sanction has been imposed;
b) The accused has been convicted, but no other sanction has been imposed but a fine (or fines) with a maximum of € 250,-.

The exceptions named under a and b do not apply in the case of a violation of a bye-law of a province, a municipality, a water control authority, or a public body established under application of the Joint Regulations Act (which means that in these situations the possibility to appeal to the Supreme Court is not limited. However, these kind of cases rarely come before the Supreme Court).

I also briefly mention section 80a of the Judiciary Organisation Act. This Article provides for a possibility to declare appeal to the Supreme Court inadmissible in case "the complaints raised do not justify an examination in cassation proceedings, because the appellant party obviously has insufficient interest in the cassation appeal (klaarblijkelijk onvoldoende belang heeft bij het cassatieberoep) or because the complaints obviously cannot succeed." This Article was introduced in 2012 to enable the Supreme Court – given the ever growing influx of cases - to concentrate on its core tasks as a court of cassation.

The admissibility of the appeal is checked by the Supreme Court itself. This concerns also the formal requirements (e.g. is the appeal in cassation lodged in time etc.)

The appeal in cassation can be based on two grounds: grounds of law (the Court of Appeal has given a wrong interpretation of a legal rule) and grounds of procedural requirements (the Court of Appeal has breached procedural requirements). Procedural requirements include the judgment's reasoning. If the complaint in cassation concerns this reasoning, the Supreme Court will test whether the reasoning is not incomprehensible and/or whether the Court of Appeal has given sufficient reasons when rejecting certain

defences. This concerns a 'marginal' check (see also answer on question 2). The Supreme Court does not assess the choices the Court of Appeal made (for instance, its choice to select certain evidence), but only whether the choices that are made are 'not incomprehensible'.

2. - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

The Supreme Court does not establish the facts of a case again, its is not a judge of fact (judex facti). So, there will not be another check on the (factual) merits by the Supreme court itself. However, in case there is a complaint about the decisions of the Court of Appel concerning the (factual) merits of the case, the Supreme Court will check whether the decision by the Court of Appeal is not incomprehensible and sufficiently reasoned. This is a rather limited check.

In case there is a complaint concerning a legal issue (a complaint on grounds of law, see answer to question 1), the Supreme Court will check the compliance of the decision of the Court of Appeal with the relevant legislation. This is a 'full check'.

The Supreme Court of the Netherlands consists of three chambers: the civil, the criminal and the tax chamber.[1] There is no Grand Chamber or Plenary Assembly. When questions occur that relate to two (or more) of these areas of law, it is possible for judges to take place in each other's chambers in order to decide the case. For instance, when a criminal case has difficult aspects of tax law in it, it is possible for a judge of the tax chamber to be involved in the decision of this case. He then forms part of the criminal chamber for the purpose of deciding that case.

Also it is possible that the draft for a judgment is handed out to the members of one of the other chambers in order to give them the opportunity to make comments about it.

3. - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

The Supreme Court does not decide on the facts of the case (see answer to question 2) and the sentence that has been imposed. Mostly, when complaints concerning the motivation of the imposed sentence are successful, the Court will quash the decision of

[1] https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Hoge-Raad-der-Nederlanden/Supreme-court-of-the-Netherlands/Paginas/Supreme-Court-chamber-structure.aspx

the Court of Appeal (in so far it concerns the sentencing) and order the Court of Appeal to decide the sentencing question again. Sometimes however, for efficiency reasons, if the imposed sentence is not allowed by law, the Supreme Court adjusts the sentence towards what is possible. This is only possible if it is clear from the judgment of the Court of Appeal what sentence the Court of Appeal would have imposed, if it would have sentenced according to the law.

Apart from that, the Supreme Court reduces the imposed sentence when the cassation proceedings have exceeded a reasonable time within the meaning of Article 6 § 1 of the ECHR. In this case, the Supreme Court will act as a "judge of fact".

Norway - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

The access to appeal to the Supreme Court in criminal cases is regulated in The Criminal Procedure Act (the translation is a bit old, and does not contain all the recent changes to the act).

Almost all decisions by the lower courts may be brought before the Supreme Court – judgments as well as decisions and court orders (interlocutory appeals).

It follows from The Criminal Procedure Act section 323 that an appeal to the Supreme Court against a judgment may not proceed without leave from the Appeals Committee of the Supreme Court. Leave can only be granted if the appeal concerns issues that are of significance beyond the scope of the current case or if it is for other reasons important that the case is decided by the Supreme Court. If there are insufficient grounds for the Appeals Committee to give consent to an appeal, for instance because the appeal does not concern issues of significance beyond that particular case, the Committee can instead overturn the judgment of the lower court according to section 323 paragraph three.

Further it follows from section 306, second paragraph, that error in the assessment of evidence in relation to the issue of guilt cannot be a ground of appeal to the Supreme Court. Apart from this the Supreme Court may try an appeal against a judgment in the lower court in its entirety – this includes overturning a conviction on the basis of procedural mistakes or interpretation and application of a statutory provision. The Supreme Court may also re-determine the punishment.

Interlocutory appeals may also be brought before the Supreme Court, and are in almost all cases decided by the Appeals Committee. It follows from section 388 that these appeals are limited to cases where the lower court summarily dismissed a case from the courts, where the appeal relates to a decision concerning a duty to testify pursuant to section 125, where the appeal relates to procedure in the Court of Appeal, or where the appeal relates to the interpretation of a statutory provision. In the last-mentioned cases, the Supreme Court functions as a court of cassation.

Poland - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

Personal freedom. Yes, the cassation to the Supreme Court is admissible against all final judgements relating to personal freedom. There are minor exceptions. A cassation for the accused may be submitted only if the accused was sentenced for an offence or a fiscal offence to the penalty of imprisonment without a conditional suspension of its execution. A cassation against the accused may be submitted only in the event of his acquittal or the discontinuation of proceedings (art. 523 of the Code of Criminal Procedure; further referred to as CCP).

Reasoning. The appeal is allowed in connection to the judgement's reasoning (see article 438, 518 CCP). The Code itself is very imprecise. The Supreme Court has said that not every dissatisfaction with the wording of the reasoning stays for a ground for cassation. According to the judgement of the Supreme Court of 30th June 2011, SNO 28/11, the cassation against judgement's reasoning does not change the content of the judgement, but only corrects the suppositions that have laid foundations for this judgement. The reasoning may be supplemented, completed or extended. It may describe the occurrences in more detailed manner. If the reasoning is the sole ground for cassation it must indicate how the erroneous evaluation of facts written down in the reasoning has influenced the judgement. According to art. 424 § 1 pt. 1 CCP the reasoning should describe the facts considered proved and which have not been proved and explain the extent to which these facts have direct influence on the contents of the sentence. Relevant are also differences between the wording of the judgement and the wording of the reasoning.

Prior checking of the admissibility of cassation. The Code of Criminal Procedure provides a complex system of prior checking of the admissibility of cassation. The proceeding starts before the appellate court, whose president is competent for the first stage of the proceeding. He checks the fulfilment of formal requirement of the cassation and eventually asks the party to complete the requirements within 7 days. This stage is purely formal one and the president of the appellate court cannot evaluate the correctness of cassation grounds. Before the case enters the Supreme Court, the prosecutor writes down a mandatory response to the cassation, containing preliminary evaluation of the correctness of the cassation grounds. In the Supreme Court a panel of one judge or 3 judges decides in a closed session, if the case: should be left without examination; the execution of the appealed judgement should be suspended; if a preventive measure is to be applied; if to dismiss the case; if to examine the case by issuing a judgement in closed session; if to accept the cassation and send it to re-examination to a competent court. The Supreme Court can decide on re-examination of the case in a open session. In case of

extraordinary claim, appeal against appellate court judgement and reopening of proceedings all the stages of prior checking of its admissibility are carried out by the Supreme Court.

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

There are several extraordinary measures of appeal upon the Polish Code of Criminal Procedure – cassation, extraordinary claim, appeal against appellate court judgement and the reopening of proceedings. They vary as to the role of the Supreme Court.

Cassation. The criminal procedure provides that proceedings before the Supreme Court deal only with the compliance of the lower's courts' decisions with the legislation. A cassation may be filed solely due to absolute grounds for reversing the judgement or other egregious infringements of law, if this might have had a material impact on the contents of a judgement (exception: cases concerning indictable offences filed by the Minister of Justice – Prosecutor General).

Absolute grounds for reversing a judgement occur, if:

1) a person unauthorised or incapable to rule or a person subject to disqualification has participated in the issue of the judgement;
2) the court panel was incorrectly selected or any of its members was not present at the entire trial;
3) a common court has ruled on a case under the jurisdiction of a special court or special court has rules on a case under the jurisdiction of a common court;
4) a lower court has ruled on a case under the jurisdiction of a higher court;
5) a penalty, a penal, a compensatory or a preventive measure unknown to the law was imposed;
6) if was rendered in violation of the principle of majority of votes or it has not been signed by any of the persons participating in its issue;
7) there is contradiction in the contents of the judgement rendering its enforcement impossible;
8) it was rendered despite the fact that criminal proceedings concerning the same act committed by the same person have already been concluded with a final judgement;
9) one of the circumstances precluding proceedings has occurred;
10) the accused was not assisted in judicial proceedings by a defence counsel or the defence counsel did not participate in the procedures in which his participation was mandatory (cases of physical or psychological disability of the accused);

11) the case was heard in the absence of the accused whose presence was mandatory (art. 439, 536).

Egregious infringements of law (art. 523 § 1 CCP) regard not only procedural, but also material law. The infringement has to be 'egregious', i.e. not only obvious, but it has to had influenced the quality of verdict. It relates to infringements, whose absence would have changed essentially the judgement (see Supreme Court decision of 18.03.2003, IV KKN 323/00; resolution of the SC of 13.02.2014, V KK 238/13).

Extraordinary claim. Apart from cassation, the Supreme Court decides extraordinary claims filed by Prosecutor General, the Ombudsman or the Children's Ombudsman. The requirements of this claim are different, as to the role played by the Supreme Court. Moreover, they are broad and imprecise. Moreover, in procedure provided for extraordinary claims the Supreme Court decides on merits. The claim is being applied when the final judgement is in violation of the principles or human and civil rights and freedoms laid down in the Constitution, is in gross violation of the law due to wrong interpretation or misapplication of the law (both of substantive law or procedure) or its findings are in obvious non-compliance with the evidence presented in the case. According to the wording of statute, the aim of the extraordinary claim is to ensure compliance with the principle of a democratic state ruled by law implementing the principles of social justice. The claim is designated to set the *res iudicata* decision aside. According to the wording of the new law, the Prosecutor General and the Ombudsman can rise an extraordinary claim regarding judgements issued in Criminal Procedure which became final since 17th October 1997 in the first three years of the statute being in force. Final judgements can be levered by the extraordinary claim 5 years long after having been issued, for the judgements issued after 3rd April 2018. Older judgements from the years 1997-2018 can be levered up to 3rd April 2021. Cases are to be set aside by mixed panels in collaboration with lay judges. The new measure of extraordinary appeal has been introduced by the Law on Supreme Court of 8.12.2017 (Journal of Laws 2018, no. 5, amended).

Appeal against appellate court judgement. Appellate court judgement reversing the judgement of the court of first instance and referring the case for re-examination is subject to appeal to the Supreme Court (art. 539a) since 2015. The claim may refer to the entire or to a part of the judgement. The appeal has to be grounded on the absolute grounds for judgement's reversal (art. 439, se *supra*) or on the violation of art. 437 CCP (types of ruling of the appellate court).

Reopening of proceedings. The Supreme Court is competent in reopening of proceeding concluded with the judgement of the appellate court or the Supreme Court. The grounds for reopening are the following (art. 540 CCP): if an offence is committed in connection with the proceedings and there is a justified reason to suspect that it might have influenced the judgement; if after the issue of a judgement new facts or evidence are disclosed, indicating that the accused did not perpetrate the criminal act or his act does not constitute an offence or is not liable to a penalty, the offender is sentenced for an

offence carrying a more sever penalty or the circumstances extraordinarily mitigating the penalty are not taken into consideration, or the circumstances resulting in an extraordinary aggravation of penalty are erroneously applied, or if the court discontinues or conditionally discontinues the proceedings, erroneously assuming that the accused committed the act of which he was charged. The proceeding is being reopened in favour of a party, if the Constitutional Tribunal declares that the provision, on the basis of which the decision was issued, is not compliant with the Constitution, a ratified international agreement or with a legislative act (proceeding may not be reopened to the disfavour of the accused). In deciding to reopen the proceedings, the Supreme Court reverses the appealed judgement and refers the case to the court competent to re-examine it. This judgement cannot be appealed. In reversing the appealed judgement, the court may acquit the accused by issuing a judgement if new facts or evidence indicate that the judgement was manifestly unjust, or discontinue the proceedings. A judgement acquitting the accused or discontinuing the proceedings are subject to an appeal (art. 547 CCP).

Principles of law. According to the Law on Supreme Court of 8.12.2017, establishing the principle of law requires a resolution made by a panel of all the judges of the Supreme Court, a panel composed of joint chambers or a panel consisting in all judges of a single chamber (art. 87 § 1). The principle of law is thus being established by the operation of law. A panel of 7 judges may decide to establish a principle of law, but it is not mandatory. Resolutions of this kind are to be published on the website of the Supreme Court together with the reasoning.

Conflict between chambers. According to article 88 of the Law on Supreme Court, if any panel of judges intents to depart from the principle of law, it has to pass the case for a resolution of the whole chamber. If the principle has been established by a chamber, joint chambers or by all judges of the Supreme Court, the principle can be departed from by resolution made respectively by the chamber, joint chambers or the whole Supreme Court. If a chamber intents to depart from a principle established by another chamber, both of them have to agree, otherwise the panel of all judges of the Supreme Court has to decide (art. 88).

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

The Supreme Court having considered the case, dismisses the cassation or entirely or partially overrules the judgment against which the cassation was filed (art. 537 sec. 1 CCP). In overruling the judgement, the Supreme Court refers the case to the competent court for re-examination or discontinues the proceeding, or – if the conviction is manifestly groundless – acquits the accused (art. 537 sec. 2 CCP). The abovementioned types of rulings are determined by the scope of consideration (extent of appeal and objections raised). Eventually the Supreme Court can change a judgement in favour of co-accused who has not raised a cassation, if it has reversed or changed a judgement in favour

of co-accused whom the appeal concerns, if the same arguments speak for reversing or changing the judgement in favour of all the accused (art. 435, 536 CCP). The judgement can be changed when without changing the factual findings, the court corrects an erroneous legal qualification regardless of the scope of cassation and objections raised (art. 455, 536 CCP). The reversal of judgement occurs regardless of the limits of the cassation (art. 439, 536 CCP).

If a cassation was filed against the accused, the Supreme Court may impose a preventive measure, unless the accused was acquitted (art. 553 CCP).

To sum up, the Supreme Court is entitled to redetermine the punishment to be applied – in its entirety or partially. However, A cassation may not be filed exclusively for the reason that the penalty in blatantly disproportionate to the offence (art. 523 § 1 CCP).

Slovakia - *Supreme Court*

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

At first, for this part of the questionnaire, it is necessary to explain the difference between the appeal as a general expression for all remedies against the decisions of the Courts and the appeal as a specific institute in the Slovak criminal procedure law.

The appeal is ordinary remedy only against judgments, which are not final and binding. The Supreme Court decides on the appeals against judgments of the Specialised Criminal Court as court of first instance.

The appellate review is extraordinary remedy against decisions, which are final and binding. The Supreme Court decides on the appellate review against decisions of the courts of Slovak republic.

The complaint is ordinary remedy only against resolutions, which are not final and binding. The Supreme Court decides on the complaint against resolutions of the Regional Courts as a court of first instance.

1. - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom?*

2. - *On what grounds is the appeal admissible?*

1. + 2. Answer:

A. The appeal

Slovak National Council Act No. 301/2005 Coll. Code of Criminal Procedure

A. 1. Subject. The appeal is admissible against all judgments of the court of the first instance relating to personal freedom.

(Section 306, sub-section 1)

A. 2. Entitled persons. Entitled persons to file an appeal are:

a) the public prosecutor for the inaccuracy of any statements,

b) the defendant for the inaccuracy of any statement that directly affects them, with the exception of a declaration of guilt to the extent in which the court accepted their declaration that they are guilty or the declaration that they do not deny the commission of the act referred to in the indictment,

c) the victim for the inaccuracy of the statement on damages,

d) the party to an action for the inaccuracy of the statement on the confiscation of items.

e) in addition to the defendant and the public prosecutor, the direct relatives of the defendant, their siblings, adoptive parents, adopted child, spouse and partner may also contest the judgment in favour of the defendant. The public prosecutor may do so even against the will of the defendant. If the defendant is denied their legal capacity or if their legal capacity is restricted, the legal representative or the defence counsel of the defendant may also file an appeal in favour of the defendant against their will.

(Section 307, sub-section 1 and Section 308)

A. 3. Deadline. An appeal shall be filed at the court against which the appeal is filed within 15 days of the pronouncement of the judgment. The pronouncement of the judgment shall be performed in the presence of the person to whom it is to be served. If the judgment is pronounced in the absence of such a person, the serving of the judgment serves as a notification.

If the defendant, their legal representative, and defence counsel are notified of the judgment, then the deadline shall run from the date of the notification that was performed last.

The deadline shall run separately for the body for the social and legal protection of children and social curatorship.

For other persons referred to in Section 308 Subsection 2 (see answer 1.+2., A.2., letter e)), except for the public prosecutor, the deadline shall expire on the same day as the defendant. (Section 309)

A. 4 The grounds. The filed written appeal must include against which statements the appeal is directed, and whether it is also directed against the proceedings that preceded the judgment.

An appeal of the public prosecutor, an appeal filed in favour of the defendant by their defence counsel, as well as an appeal filed in favour of the victim or the party to an action by their proxy, must also include a justification so that it is clear in which part it contests the judgment and what errors are being objected to in the judgment or the proceedings which preceded the judgment.

(Section 311, sub-section 1 and 2)

B. The appellate review

B. 1. Subject. The appellate review is admissible against a final decision of the court by which the law was violated or if the provisions of a procedure which preceded it were violated, if such violation is the reason for an appellate review under Section 371 (see answer 1.+2., B.4.). The decision pursuant to this section mean

a) a judgment and a criminal warrant,

b) a resolution on the referral of the matter, with the exception of a resolution on the referral of the matter to another court,

c) a resolution on the termination of the criminal prosecution,

d) a resolution on the conditional suspension of the criminal prosecution,

e) a resolution on the conditional suspension of the criminal prosecution of the cooperating accused,

f) a resolution on the approval of the settlement and termination of the criminal prosecution,

g) a decision on the imposition of a protective measure,

h) a decision by which an appeal filed against a decision under Paragraphs a) through g) (the above mentioned decisions in this answer) was refused or a decision by which the court of appeals decided in the matter alone on the basis of an appeal.

(Section 368, sub-section 1 and 2)

B. 2. Entitled persons.

Entitled persons to file an appellate review are:

a) The Minister of Justice shall file an appellate review for the reasons referred to in Section 371 (see answer 1.+2., B.4.) only upon a suggestion. The suggestion may be filed by a person whom the right to file an appellate review is not granted by this Act, with the exception of a person who does not fulfil the condition of the appellate review referred to in Section 372 Subsection 1.

b) An appellate review may be filed against the final decision of the court of second instance for the reasons referred to in Section 371 Subsection 1 (see answer 1.+2., B.4. until letter n)) by

the Attorney General against any of the statements and

the accused in their favour against the statement that directly concerns them.

c) in favour of the accused, with their express written consent, also by their direct relative, their sibling, adoptive parent, adopted child, spouse or partner. If the accused is a juvenile, a person who is denied their legal capacity, or a person whose legal capacity is restricted, then the legal representative or the defence counsel of the accused may file an appellate review in favour of the accused against their will.

(Section 369)

Entitled persons, with the exception of the Minister of Justice, may file an appellate review only if they exercise their statutory right to file a proper appeal, and a decision was

made on it. The accused and the persons referred to in Section 369 Subsection 5 (see answer 1.+ 2., B.2. letter

c)) may file an appellate review even if a proper appeal was submitted by the public prosecutor, or the victim and the court of appeals decided to the detriment of the accused. The Attorney General may file an appellate review even if an appeal was filed by the accused and the court of appeals decided in favour of the accused.

(Section 372, sub-section 1)

B. 3. Deadline. If the appellate review is filed to the detriment of the accused, it may be filed within six months after the decision of the court has been served to the public prosecutor. If the appellate review is filed in favour of the accused, it may be filed within three years after the decision has been served to the accused; if a decision is served to the accused as well as to their defence counsel or legal representative, the deadline shall run from the serving that was performed last.

The Minister of Justice's deadline shall run from the serving that was performed last.

The appellate review shall be filed at the court which decided in the first instance.

(Section 370)

B. 4 The grounds. The appellate review is admissible against aforementioned decisions on the grounds that

a) a court without jurisdiction decided in the matter,

b) the court decided in an illegal composition,

c) the right to a defence counsel was violated in a significant manner,

d) the main trial or the public hearing was performed in the absence of the accused, although the statutory requirements were not met for such a case,

e) the matter was acted on and decided by a law enforcement authority, the judge or an associate, who was supposed to be excluded from the performance of the acts of the criminal proceedings,

f) the criminal prosecution was performed without the consent of the victim, although their consent is legally required,

g) the decision is based on evidence, which was not lawfully performed by the court,

h) the punishment was imposed outside the legally stipulated criminal penalty or such type of punishment was imposed, which is not admissible by law for the heard criminal offence,

i) the decision is based on an incorrect legal assessment of the found act or on the incorrect application of other substantive provision; the correctness and completeness of the found act may however, not be examined or changed by the court of appellate review,

j) a protective measure was imposed, although the statutory requirements were not met for such action,

k) a criminal prosecution was conducted against the accused, despite its being inadmissible,

l) the court of appeals dismissed the appeal under Section 316 Subsection 1 (on the grounds the appeal was submitted late, by a person who is not authorised to do so, or by a person who expressly waived their right to an appeal or re-submitted an appeal which they hadpreviously expressly withdrawn in the same matter or if it was filed against a statement against which it is not admissible), although the statutory requirements were not met for such action, or it took the withdrawal of the appeal by the defence counsel or the person referred to in Section 308 Subsection 2 (see answer 1.+2., A.2., letter e)) into account, despite the fact the accused did not give their express consent for the withdrawal of such appeal,

m) prior to the submission of an indictment, the Attorney General revoked the final decision of the public prosecutor after the deadline referred to in Section 364 Subsection 3 (within six months after the contested decision becomes final),

n) a life prison sentence was imposed upon the accused and the court decided that their conditional release from serving a prison sentence was not admissible.

In the event, that appellate review is filled by Minister of Justice, the appellate review is also admissible on the grounds that

a) the contested decision violated a provision of the Code of Criminal Procedure or a special regulation on custody, the Penal Code or the Code of Criminal Procedure on the conditional release of the convicted from serving a prison sentence, on the execution of punishment the execution of which was conditionally deferred, on the execution of the remaining term of the punishment after the conditional release or on the execution of the substitute punishment by a prison sentence which was imposed alongside a monetary penalty or

b) decision arising from the merits which, based on the performed evidence, were incorrectly determined in important aspects, or if the provisions to ensure clarification of the matter were grossly violated during the determination of the merits.

(Section 371, sub-section 1, 2 and 3)

C. The complaint

C. 1. Subject. The complaint is admissible against resolutions. In particular, the complaint is admissible against the resolution of the court of appeals on the remand of

the accused in custody, and which is decided on by another court of this court with superior authority. (Section 185, sub-section 1 and 4)

C. 2 Entitled persons. Entitled persons to file a complaint are:

a) unless the law stipulates otherwise, the complaint may be filed by a person who is directly affected by the resolution or who filed a petition for the resolution, which they are entitled to do by law; a complaint against the resolution of the court may also be filed by the public prosecutor and can even be in the accused's favour. The legai representative, defence counsel, or body for the social and legai protection of children and social curatorship may also file a complaint in favour of the juvenile accused even against their will; the deadline for the submission of an appeal shall run separately.

b) A complaint against the resolution on custody and on the protective treatment may be filed in favour of the accused, even by persons who could also file an appeal in their favour (see answer 1.+2., A.2., letter e)).

(Section 186)

C. 3. Deadline. A complaint shall be submitted to the authority against whose resolution it is directed within three working days of the resolution notification, with the exception of complaints against resolutions under Section 83 Subsection 2 (resolution on the non-remand into custody and the resolution on the release of the arrested accused to liberty); if it is performed under Section 204 Subsection 1 (If the public prosecutor is, together with the file, submitted a person who was apprehended as a suspect during the commission of an offence for which the law provides a prison sentence with an upper penalty limit that does not exceedfive years, or immediately after it or after expiration of an obstacle to their immediate apprehension within 24 hours after committing the offence and the public prosecutor does not release them to liberty, they shall submit them to the court along with the file and an indictment no later than within 48 hours of apprehension. If the public prosecutor finds reasons for custody, they shall simultaneously petition that the accused is remanded in custody.), a complaint shall be filed before the completion of the summary investigation. If the accused as well as their legal representative or defence counsel are notified of the resolution, the deadline shall run from the notification that was performed last.

The deadline for the submission of a complaint from a person who may file a complaint in favour of the accused ends on the same day as in the case of an accused; however, the deadline of the public prosecutor shall run separately.

(Section 187)

C. 4 The grounds. The complaint is admissible against aforementioned resolutions on the grounds that

a) the inaccuracy of any of its statements,

b) an obvious conflict of the statements with the justification, or

c) the violation of the provisions on the proceedings that preceded the resolution, if such violation could cause incorrect statements in the resolution.

If a complaint is being filed by the public prosecutor, body for the social and legal protection of children and social curatorship, or defence counsel for the accused or on their own behalf, the complaint must also be justified, with the exception of a complaint by the public prosecutor against the resolution on the non-remand of the accused in custody.

(Section 189)

3. - *Inparticular, is an appeal also admissible on thegrounds connectedto thejudgment's reasoning and, if so, to what extent?*

The appeal

Admissibility of an appeal on the grounds connected to the judgment's reasoning is not expressly written in the Code of Criminal Procedure. However from the content of the Code of Criminal Procedure it is clear that a proper reasoning is statutory requirement of the judgement. If this requirement is not fulfilled, the entitled person can file an appeal against the judgment's reasoning in connection with the statement of the judgement, e. g. the statement is in obvious conflict of the statements with the reasoning.

The appellate review

The appellate review is not admissible only against judgment's reasoning, but it is admissible against the statement of the judge in connection with judgment's reasoning e. g. an obvious conflict of the statements with the reasoning.

Section 371, sub-section 7: An appellate review against the justification of the decision only is not admissible.

The complaint

See also answer to question 1. - C.4.

The complaint against the resolution is admissible on the grounds that an obvious conflict of the statements with the reasoning.

4. - *Is there any prior checking of the admissibility of the appeal?*

The appeal

The court of appeals shall refuse an appeal if it was submitted late, by a person who is not authorised to do so, or by a person who expressly waived their right to an appeal or re-submitted an appeal which they had previously expressly withdrawn in the same matter or if it was filed against a statement against which it is not admissible. An appeal may not

be refused for being submitted late if the entitled person only filed it late because they followed the wrong instructions of the court.

(Section 316, sub-section 1 and 2)

The appellate review

Code of Criminal Procedure includes the system of prior checking in appellate review by the presiding judge of the court of appellate review. An appellate review and the submitted files shall be prior checked (preliminary examined) by the presiding judge of the court of appellate review. At this stage, the presiding judge have several options:

1) If the submission is not complete or it has other removable errors, the presiding judge shall call upon the person entitled to file an appellate review or the defence counsel of the accused to remove such errors. The presiding judge shall also specify a reasonable deadline for their removal. The provisions of Section 311 Subsection 3 (If an appeal fails to meet the terms referred to in Subsection 2, the presiding judge shall cali upon the appellant to rectify the deficiencies. If aperson other than the defendantfails to comply with such a call, the court may proceed under Section 70. - Disciplinary fine) shall apply accordingly.

2) If it is necessary to clarify any circumstance for the decision, the presiding judge or the member of the court of appellate review designated by them, or upon their request another law enforcement authority, shall perform the necessary investigation.

3) The presiding judge of the court of appellate review shall suspend the appellate review procedure if they request the European Court of Human Rights to issue an advisory opinion on the principal questions concerning the interpretation or exercise of rights and freedoms stated in the Convention for the Protection of Human Rights and Fundamental Freedoms. If the appellate review procedure is suspended under the preceding sentence, the presiding judge of the court of appellate review may continue the appellate review procedure even if the European Court of Human Rights did not issue an advisory opinion and there are serious reasons for continuation in the appellate review procedure.

(Section 378 and 379)

If the requirements for the admissibility are not fulfilled, the court of appellate review shall refuse the appellate review by a resolution and without the examination of the matter at the closed hearing, if

a) it was filed late,

b) it was filed by an unauthorised person,

c) it is clear that the reasons for the submission of an appellate review under Section 371 (see answer 1.+2., B.4.) have not been met,

d) the terms of an appellate review under Section 372 (entitledpersons, with the exception of the Minister of Justice, may file an appellate review only if they exercise their

statutory right to file a proper appeal, and a decision was made on it) or Section 373 (The accused, or the persons in favour of the defendant, may file an appellate review only through the defence counsel; the accused must be represented by a defence counsel in the proceedings on an appellate review) or the procedure under Section 379 Subsection 1 (see answer to this question inpoint 1)) have not been met,

e) the appellate review does not include the necessary requirements referred to in Section 374 Subsection 1 or 2 (^n appellate review, during its submission, must be justified so it is clear which part of the decision is being contested and what errors are being objected to in the decision or the proceedings that preceded the decision. The appellate review must state the reasonfor the appellate review under Section 371.), even after the procedure under Section 379 Subsection 1 (see answer to this question in point 1)),

f) it was filed against a decision against which an appellate review is not admissible.

(Section 382)

The complaint

There is no prior checking of the admissibility of the complaint in the form of different decision but the superior authority shall refuse the complaint, if

a) it is not admissible,

b) it was filed late, by an unauthorised person or the person who expressly waived it, or who filed the complaint again, which they have previously expressly withdrawn, or

c) it is not justified.

(Section 193, sub-section 1)

2. Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish theprinciple of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?

In the case of ordinary remedies (appeals and complaints), the Supreme Court of the Slovak Republic can rule on the merits.

The Supreme Court acts and rules on:

• ordinary remedies against regional court and Special Criminal Court decisions where the rules governing court procedure so stipulate,

• extraordinary remedies against district court, regional court, Special Criminal Court and Supreme Court decisions where the rules governing court procedure so stipulate,

• conflicts of jurisdiction in rem between courts and bodies of public administration,

• transfers of cases to a court other than the competent court where rules governing court procedure so stipulate,

• other cases where the law or an international treaty so stipulate.

The three-member chambers rules on ordinary and extraordinary remedies against regional courts, district courts and Special Criminal Court decisions.

The five-member chambers rules on ordinary and extraordinary remedies against the three- member chambers decisions.

Slovak National Council Act No. 757/2004 Coll. on Courts and on Amendments to Certain Acts

The Chamber of the Supreme Court shall consist of three Judges, one of whom shall be the President of the Chamber. When deciding on ordinary or extraordinary remedies against decisions of the Chambers of the Supreme Court, the Chambers of the Supreme Court shall consist of a President and four Judges. The court order may provide that a panel of the Supreme Court also consists of a greater number of judges. The Senate must always consist of an odd number of judges. The President of the Senate manages and organizes the activities of the Senate.

(Section 18, sub-section 1)

The Supreme Court promotes the uniform interpretation and consistent application of laws and other legislation of generai application by way of

• its own decision-making,

• adopting opinions aimed at unifying the interpretation of laws and other legislation of general application,

• publishing final court decisions of primary importance in the 'collection of opinions of the Supreme Court and decisions of the courts of the Slovak Republic'.

3. What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?

The Supreme Court of the Slovak Republic rules on ordinary remedies, such as complaints and appeals, as well as extraordinary remedies which are appellate reviews.

Slovak National Council Act No. 301/2005 Coll. Code of Criminal Procedure The complaint

If the superior authority does not refuse the complaint, it shall revoke the contested resolution, and if given the nature of the matter a new decision is necessary,

a) they shall decide in the matter themselves, or

b) they shall order the authority, against whose decision the complaint is directed, to act and decide in the matter again, with the exception of decision making on a complaint against a decision on custody .

(Section 194, sub-section 1)

The authority deciding on the complaint cannot change the resolution based on their notion to the detriment of the person who filed the complaint, or in whose favour the complaint was filed. (Section 195, sub-section 1)

If the superior authority changes the resolution in favour of the accused for reasons of the violation of their right to a defence counsel and it is also in favour of any other co-defendant, they shall also change the resolution in favour of such co-defendant.

(Section 195, sub-section 2)

The appeal

The court of appeals shall revoke the contested judgment and return the matter to the court of the first instance so that it can hear it again to the necessary extent, and decide if it found that

a) the court decided in an illegal composition,

b) the defendant did not have a defence counsel, even though a defence counsel was mandatory, or

c) the main trial was performed in the absence of the defendant, although statutory requirements had not been met for such a case.

(Section 316, sub-section 3)

The court of appeals shall refuse the appeal if it finds that it is not justified.

(Section 319)

The court of appeals shall revoke the contested judgment and

a) refer the matter,

b) conditionally suspend the criminal prosecution,

c) terminate the criminal prosecution,

d) suspend the criminal prosecution.

(Section 320, sub-section 1)

The court of appeals shall also revoke the contested judgment due to

a) significant errors in the proceedings that preceded the contested statements of the judgment, particularly because the provisions by which the clarification of the matter should have been provided or the right to defence were violated,

b) errors in the contested statements of the judgment, particularly due to ambiguity or incompleteness of its factual findings, or because the court did not deal with all the circumstances important for the decision,

c) the occurrence of doubts about the accuracy of the factual findings of the contested statements, which require repeated performance or further evidence for their clarification,

d) the violation of the provisions of the Penal Code by the contested judgment,

e) the imposed punishment being disproportionate, or

f) the decision on the claimed entitlement of the victim for damages being contrary to the law. (Section 321, sub-section 1)

The court of appeals shall decide on the matter itself, if a new decision may be made on the basis of the merits which were correctly found in the contested judgment, or completed by evidence performed before the court of appeals. The court of appeals may change the contested judgment to the detriment of the defendant only on the basis of an appeal by the public prosecutor that was filed to the detriment of the defendant; the statement on damages may then be performed on the basis of an appeal by the victim who made a claim for damages.

(Section 322, sub-section 3)

The appellate review

The Supreme Court shall decide on an appellate review.

(Section 377)

If the court of appellate review ascertained reasons for an appellate review under Section 371, it shall pronounce the violation of the law in the relevant provisions, on which this reason rests, by a judgment.

At the same time as the statement referred to in Subsection 1, the court of appellate review shall revoke the contested decision or any part thereof, or even a wrong proceeding that preceded the contested decision. After the revocation of the decision of the court of appeals, it shall also revoke the preceding decision of the court of the first instance. If only one of the statements of the contested decision is illegal or the decisions of the court of the first instance are illegal, and if it may be separated from others, the court of appellate review shall only revoke such statement. However, if it revokes the statement on guilt only in part, the entire statement on punishment shall also be revoked as well as other statements that have their basis in the statement of guilt. They shall also revoke other decisions that follow the contents of the revoked decision, if given the change that occurred due to the revocation, it lost its basis.

(Section 386, sub-section 1-2)

The court of appellate review shall usually order the court, whose decision it concerns, to hear the matter to the necessary extent and decide on it, after the revocation of the contested decision or any of the statements.

(Section 388, sub-section 1)

If the court of appellate review finds that the reasons for an appellate review are not proven, the appellate review shall be refused.

(Section 392, sub-section 1)

According to the provisions above, the Supreme Court of the Slovak Republic shall revoke decision of lower court and decide in merit in case of appeal and the complaint itself.

Slovenia - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

In the Slovenian criminal system, an appeal to the Supreme Court as an ordinary legal remedy is not admissible against all judgments and measures relating to personal freedom.

According to Article 398 of the Slovenian Criminal Procedure Act (CPA), an appeal to the Supreme Court is admissible against second-instance judgments (i.e. judgements of courts of second instance) only in following cases:

1) if a court of second instance has passed a sentence of life imprisonment or thirty years imprisonment or has affirmed the judgement of the court of first instance by which such sentence was pronounced;

2) if the court of second instance, after conducting a hearing, determined the factual situation differently from the court of first instance and based its judgement on such factual determination;

3) if the court of second instance has modified a judgement of acquittal passed by the court of first instance and rendered instead a judgement of conviction.

As of October 20th 2019 an appeal to the Supreme Court will also be admissible if the court of second instance, by a judgement, confiscated an object that does not belong to the perpetrator (art. 73/2 of the Criminal Code) or property benefits gained by committing of criminal offence (art. 75, 77a and 77b of the Criminal Code) or if it confiscated property from a legal person (art. 77 of the Criminal Code); (amendment CPA-N).

An appeal is admissible if it was filed within the statutory period, if it was filed by a person entitled to appeal or a person who has not waived his right to appeal, if an appeal was not withdrawn and if the appeal is admissible under statute (in cases listed above). Belated (CPA, art. 389) and inadmissible (CPA, art. 390) appeals are dismissed by a ruling of the presiding judge of the court of first instance (CPA, art. 375).

The Supreme Court considers appeals against second-instance judgements at a session of the panel according to provisions applying to the appellate procedure in second instance (CPA, art. 398). This means that a judgement may be challenged (CPA, art. 370):

1) on the grounds of substantial violation of provisions of the criminal procedure;

2) on the grounds of violation of criminal law;

3) on the grounds of erroneous or incomplete determination of the factual situation;

4) on account of the decision on criminal sanctions, confiscation of proceeds, costs of criminal proceedings, indemnification claims and the announcement of the judgement in the press and on radio or television.

According to Articles 389/2 and 383 of the CPA, the Supreme Court examines the part of the judgement which is challenged by the appeal, however, it shall always examine ex officio:

1) whether there exists a violation of the provisions of the criminal procedure referred to in points 1, 2, 6 and 8 to 11 of the first paragraph of Article 371 of the CPA, whether the main hearing was, contrary to the provisions of the CPA, conducted in the absence of the defendant and whether in the case when defence is mandatory the main hearing was conducted in the absence of defence counsel;

2) whether criminal law was violated to the prejudice of the defendant (CPA, art. 372).

A hearing may not be conducted before the Supreme Court. If upon an appeal the court finds that the reasons which governed its deciding in favour of the defendant are also to the advantage of a co-defendant who has not brought an appeal or has not brought it in that particular direction, the court proceeds ex officio as if such appeal was also filed by the co- defendant (CPA, art. 398/3 and 387).

In some cases, an appeal against a ruling of the court of second instance on detention is

admissible to the Supreme Court. The Supreme Court decides by a panel of three judges on the appeal:

1) when the court of second instance annuls or modifies the judgement of the court of first instance and establishes that grounds for detention still exist or lifts detention (CPA, art. 392/7 and 394/3) or

3) where owing to the affirmation or modification of the judgment of the court of first instance, the court of second instance orders detention (CPA, art. 394/4).

A ruling on detention may be challenged on the same grounds as judgements (stated above; CPA, art. 370). The Supreme Court examines only the part of the ruling which is challenged by the appeal (there is no ex officio review).

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

Appellate proceedings as a last-instance check on the merits of the case are exceptional before the Supreme Court. Usually, the Supreme Court decides on extraordinary legal remedy called "request for protection of legality".

After the criminal procedure has been concluded, a request for the protection of legality may be submitted against a final judicial decision by which the criminal proceedings were concluded or against any other decision if the Supreme Court may be expected to issue a decision on a legal issue which is important for providing legal certainty, the uniform application of the law or development of the law through case-law, and against judicial proceedings which preceded that decision. A request is possible on the following grounds (CPA, art. 420/1):

1) violation of criminal law;

2) substantial violation of provisions of criminal procedure referred to in the first paragraph of Article 371 of the CPA,

3) other violations of provisions on criminal procedure if such violations affected the lawfulness of a judicial decision.

Notwithstanding the above, the Supreme State Prosecutor may submit a request for the protection of legality in any instance of violation of law. A request for the protection of legality may not be filed on grounds of an erroneous or incomplete determination of factual situation, nor against the decision of the Supreme Court by which a request for the protection of legality has been adjudicated.

Exceptionally, a request for the protection of legality may be submitted during a criminal procedure which is not yet concluded by a final decision, but only against a final decision ordering detention or against a final decision on the extension of detention when the Supreme Court panel extends detention by a ruling (CPA, art. 205/2) and in case of extension after the filing of the charge sheet (CPA, art. 272/2).

Requests for protection of legality are decided by a panel of five judges. If a request for protection of legality is submitted against an appellate decision of the Supreme Court, the panel consists of seven judges. There is no Grand Chamber that could rule in the most important cases or in cases of conflict between two court's panels. However, the Supreme Court, sitting in a plenary session, may adopt legal opinions of principle on issues important to the uniform application of statute laws. A plenary session consists of all judges of the Supreme Court. Under the Courts Act, adopted legal opinions of principle are only binding on panels of the Supreme Court and may be changed only at a new plenary session (art. 110 of the Courts Act).

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

In an appellate procedure (deciding on appeals against second-instance judgements), the Supreme Court can modify the judgement regarding the decision on punishment if this decision is challenged by an appeal. If an appeal is brought in favour of the defendant on the grounds of erroneous and incomplete determination of the factual situation or on the grounds of violation of criminal law, this appeal also includes the appeal against the decision on punishment (CPA, art. 386).

According to point 5 of article 372 of the CPA, a violation of the criminal law exists if the criminal law was violated in respect of the issue of whether in passing a decision on the sentence the court transgressed its statutory right.

According to article 374 of the CPA, a judgement may also be challenged in respect of a decision on punishment whereby the court, while not exceeding its statutory right had nevertheless failed to mete out punishment adequately considering the circumstances influencing the determination of the amount of penalty; the aforesaid judgement may also be challenged in respect of the application by the court of provisions providing for the mitigation or remission of the sentence and for a suspended sentence or judicial admonition, and in respect of the failure of the court to apply these provisions even though statutory grounds existed for this.

When deciding on extraordinary legai remedy (request for protection of legality), the Supreme Court can only decide on violation of criminal law regarding the decision on punishment (point 5 of art. 372 CPA, stated above).

If the Supreme Court finds that a request for the protection of legality is well-founded, it passes a judgement by which, depending on the nature of the violation, it modifies a final decision; or annuls in whole or in part the decision of both the court of first instance and higher court or the decision of the higher court only, and returns the case for a new decision or retrial by the court of first instance or the higher court; or it confines itself to establishing the existence of a violation of law (CPA, art. 426).

Spain - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

1.1. The appeal to the Supreme Court is not admissible against all judgements and measures relating to personal freedom. The fact of being deprived of liberty or having the right to freedom affected is not one of the criteria to make an appeal admissible before de Supreme Court.

As article 847 of the Criminal Procedure Code reads,

«1. *An appeal in cassation is appropriate:*

a) Due to infringement of the law and breach of form against:

1. Judgments passed in a single instance or in appeal by the Civil and Criminal Benches of the High Courts of Justice.

2. Judgments passed by the Appeals Chamber of the National High Court.

b) Due to infringement of the law for the reason provided for in number 1 of article 849 against judgments passed in appeal by the Provincial Courts and the Criminal Bench of the National High Court.

2. *Those limited to declaring nullity of judgments passed in the first instance are excepted.*»

Regarding to misdemeanors, article 977 of the Criminal Procedure Code reads:

«There can be no appeal whatsoever against a judgment passed in the second instance. The body passing it will order the original records to be returned to the judge, with certification of the judgment passed, so that they may proceed to enforce it.»

Article 852 of the Criminal Procedure Code reads:

«In all cases, the appeal in cassation may be lodged on the grounds of an infringement of a constitutional precept».

To sum up, the appeal in cassation is admissible on the three grounds: i) due to infringement of the law; ii) due to breach of form and iii) due to an infringement of a constitutional provision.

However, when the judgment appealed was passed by the Provincial Court or by the Criminal Bench of the National High Court resolving an (ordinary) appeal, the cassation will only be admissible due to infringement of the law in the sense of number 1 of article 849.1 of Criminal Procedure Code (infringement of a criminal precept of a substantive nature, or other legal rule of the same nature which must be observed in application of criminal law).

1.2. The appeal in cassation is admissible on the grounds connected to the judgment´s reasoning.

Article 849 of the Criminal Procedure Code reads:

«*It will be understood that the Law has been infringed for the purposes of lodging an appeal in cassation where:*

1. Given the facts declared to be proven in the decisions included in the two previous articles, a criminal precept of a substantive nature, or other legal rule of the same nature which must be observed in application of criminal law, has been infringed.

2. There is an error in assessing the evidence, based on the document on the records, which show the error of the judge without being contradicted by other elements of evidence.»

According to the article 852 of Criminal Procedure Code (cited above) the appeal in cassation may be lodged on the grounds of an infringement of a constitutional provision.

Nevertheless, whether the judgment appealed comes from the Provincial Court or by the Criminal Bench of the National High Court resolving the (ordinary) appeal, the appeal in cassation before the Supreme Court will only be admissible due to infringement of the Law upon the terms of number 1 of article 849.1 of Criminal Procedure Code.

Regarding to a prior checking of the admissibility, articles 855, 856, 857 and 858 of Criminal Procedure Code establishes that the appeal in cassation needs to be «prepared». It will be prepared before the Court who pronounced the judgment and who will control that the appeal in cassation accomplishes the requirements in order to be sent to the Criminal Chamber of the Supreme Court.

Article 855 stands:

«*The person proposing to lodge an appeal in cassation will request the Court that passed the final decision for a testimony of it and will state the type or types or appeal they intend to use.*

Where the appellant proposes to ground the appeal in number 2 of article 849, the must designate, without giving reasons, the particulars of the document showing the error in assessing the evidence.

If they propose to use that for breach of form, they will also designate, without giving reasons, the error or errors allegedly committed and, as appropriate, the claim made to rectify them and its date.»

Article 856 establishes:

«The request expressed in the previous article will be made in a writ authorized by the Lawyer and Procurator, within the five days following the last notification of the judgment or order against which it is intended to lodge the appeal».

Article 857 reads:

«This writ will contain the solemn promise to make the deposit provided for in article 875 of this Act.

If the party preparing the appeal has been declared totally of partially bankrupt or they have been given the right to free legal aid, they will request the Court that this circumstance is expressly recorded on the certification of the judgment to be issued, and they will also undertake, if their financial situation improves, to make payment of the amount of the deposit which, depending on the case, must be made.»

Article 858 reads:

«The Court, within the following three days and without having heard the parties, will have the appeal prepared, if the judgment appealed is in cassation and all the requirements demanded in the previous articles have been complied with, or, otherwise, it will deny it in a reasoned order, a certified copy of which will be given to the appellant when notification is made.»

Article 849 stands:

«In the same decision taking the appeal as being prepared, the Court Clerk will be ordered to issue, within a period of three days, testimony of the judgment, including the dissenting votes, if any, and once issued, the Court Clerk will summon the parties to appear before the Second Chamber of the Supreme Court, within a non-extendable time limit of 15 days, if referring to judgments passed by Courts sitting in the Peninsula; 20 days, if they sit in the Autonomous Region of the Balearic Islands, and 30, if they sit in the Autonomous Region of the Canary Islands or the autonomous cities of Ceuta or Melilla.»

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

2.1. In accordance with the provisions cited above, the Criminal Procedure Code permits the cassation appeal due to breach of form and also both infringement a constitutional precept and infringement of the law.

The appeal of cassation meets a double nomofilactic or protective function of the law and both unifying and correction of deviations in its interpretation. This unifying function allows the adequate development of the principle of equality (article 14 and 139.1 of the Spanish Constitution), as much as guarantees the principle of legal certainty (article 9.3 of the Spanish Constitution).

In order to reinforce the nomofilactic function of the Supreme Court, when the judgment appealed was passed by the Provincial Court or by the Criminal Bench of the National High Court resolving an (ordinary) appeal, the cassation appeal needs to raise a criminal legal problem that justifies the «cassational interest». The «cassational interest» exists when: i) the appealed judgment openly opposes the jurisprudential doctrine emanating from the Supreme Court; ii) issues on which there is conflicting jurisprudence of provincial courts are resolved; iii) the rules applied have not been in force for more than five years, provided there is no jurisprudential doctrine already established by the Supreme Court.

2.2. The President of the Criminal Chamber, acting on his or her own initiative or at the behest of a majority of its members, may convene a jurisdictional (or no jurisdictional) Plenary to hear one or more such cases with a view to unifying different interpretative criteria.

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

Article 901 establishes the consequences of the ruling:

«*Where the Chamber upholds any of the grounds alleged for cassation, it will declare the appeal to be allowed and will cassate and annul the judgment in question, ordering the deposit paid to be repaid and making an award as to costs ex officio.*

If it dismisses it, it will declare that the appeal is disallowed and award costs against the appellant and the loss of the desposit in payment for the items set out in article 890, or, if they have the right to free legal aid, an equivalent amount when their financial situation improves. (...)».

Article 901.a.i) continues:

«Where the Chamber upholds that the breach of form which grounded the appeal was committed, they will declare it to be allowed and order the case to be returned to the Court that it came from so that, reinstating it to the state it was in when the error was committed, it substantiates it and concludes it in accordance with law.»

And article 901.a.ii):

«If the Chamber upholds that the breach of form alleged was not committed, it will declare it to be dismissed and will proceed, in the same decision, to resolve on the grounds for cassation due to infringement of the law.

In all cases, it will order the case to be returned to the sentencing court.

Article 902 stands:

«If the Chamber cassates the decision subject to appeal by virtue of any reason grounded on infringement of the law, it will then, but separately, pass the appropriate sentence in accordance with law, with no more limitation than that of not imposing a greater sentence that that indicated in the judgment cassated or that whic is appropriate in accordance with the pleas of the appellant, in the event that a higher sentence is requested.»

And finally, article 903 reads as follows:

«Where the appellant is one of the accused, the new sentence will take in those for the others in as far as they were favourable, as long as they were in the same position as the appellant and the grounds given on which cassation of the sentence is declared are applicable to them. They will never be prejudiced by anything adverse to them».

Therefore, once the appeal of cassation has been upheld the consequences will be different depending on the reasons that were alledged to raise the appeal: 1) if the Chamber upholds that the breach of form which grounded the appeal was committed, they will declare it to be allowed and order the case to be returned to the Court that it came from so that, reinstating it to the state it was in when the error was committed, it substantiates it and concludes it in accordance with law; 2) If the Chamber cassates the decision subject to appeal by virtue of any reason grounded on infringement of the law, it will then, but separately, pass the appropriate sentence in accordance with law, with no more limitation than that of not imposing a greater sentence that that indicated in the judgment cassated or that which is appropriate in accordance with the pleas of the appellant, in the event that a higher sentence is requested.

It must be taken into consideration that whether the cassation appeal is based on arguments related only to the length of penalties, the Supreme Court may not re-determined them (with the limit mentioned in the paragraph above), unless those penalties are unlawful or unreasonable.

Sweden - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against alljudgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particu- lar, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

In criminal matters, judgments and decisions on measures relating to personal freedom can be appealed to the Supreme Court as the final instance. One excep- tion is that a final decision in which the court of appeal has rejected a request for — or revoked a decision concerning — detention, permit for restrictions or travel prohibition, under certain circumstances may not be appealed.

Moreover, for a case to be considered by the Supreme Court, a leave to appeal is required. Leave to appeal may be granted only if:

1. it is of importarne for the guidance of the application of law that the Su¬preme Court considers the appeal (dispensation of precedent); or

2. there are extraordinary reasons for a trial, such as that there is a ground for a new trial, that a grave procedural error has occurred or that the ter- mination of the case in the court of appeal obviously depended on an ag- gravated oversight or an aggravated mistake (extraordinary dispensation).

The Supreme Court itself decides whether a leave to appeal should be given and the provision on when leave to appeal may be granted is non-mandatory. Thus, even if there are grounds for granting leave in a specific case, the Supreme Court is not obliged to do so. The question of whether leave to appeal should be granted is generally decided by one or three justices. Leave to appeal is granted in approximately three percent of the cases appealed to the Supreme Court.

2 - *Are theproceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compilarne of the lower courts ' decisions with the relevant legislation? How does the Court establish theprinciple of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber or the Plenary Assembly rule on the case or settle the conflict?*

The Supreme Court's main function is to provide precedents for the lower courts as to the correct application of law. Generally, it does not address the evi- dentiary assessments of the lower courts, although it is not prevented from do- ing so. Leave to appeal may only be granted on the grounds that have been stated above. If deemed appropriate by the court, a leave to appeal can be lim- ited to a part of a case or to a certain question in a case.

If a case has been granted leave to appeal, the case is brought before a court of five justices. If those five justices find reasons to overturn a former precedential judgement, they can refer the case to a plenary sitting in which all 16 justices of the Supreme Court participates.

3 - ***What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine thepunishment to be applied, and if so, to what extent?***

If a judgment in a criminal case is appealed and the Supreme Court grants leave, the Supreme Court has the power to re-determine the punishment to be applied. However, if only the defendant has appealed the judgment of the district court or the court of appeal (or if the prosecutor has lodged an appeal for the benefit of the defendant) the main rule is that the Supreme Court may not sentence the defendant to a criminal sanction that may be considered more severe or more far-reaching than what has been imposed by the lower courts (prohibition of reformatio inpeius).

United Kingdom - *Supreme Court*

1 - *In criminal matters, is the appeal to the Supreme Court admissible against all judgments and measures relating to personal freedom? On what grounds is the appeal admissible? In particular, is an appeal also admissible on the grounds connected to the judgment's reasoning and, if so, to what extent? Is there any prior checking of the admissibility of the appeal?*

There is no common law right of appeal in the UK and so appeals are only available insofar as provided by statute.

An appeal may be made to the Supreme Court of the United Kingdom in criminal matters from the courts of England and Wales, and Northern Ireland, but not generally from Scotland except in relation to devolution issues.[2]

In general, appeals come to the Supreme Court by grant of leave. This is given either by the court whose decision is sought to be appealed or, if that is refused, by the Supreme Court itself. Specifically, for leave to be granted in a criminal case, the Court of Appeal (of England and Wales, or of Northern Ireland) must first certify that a point of law of general public importance is involved in the decision sought to be appealed. The Court of Appeal may so certify, whether it grants leave or not. The test for whether leave should be granted, applicable before both the Court of Appeal and the Supreme Court, is whether that certified question raises a point of law which ought to be considered by the Supreme Court.

Both the prosecution and defence may appeal from the Court of Appeal to the Supreme Court. In effect, an appeal may be made from any decision of the Court of Appeal on appeal from the Crown Court (that is, following trial on indictment, or *de novo* review of a summary trial) – primarily, to refuse to quash a conviction. Appeals are also available regarding certain determinations made in preparatory hearings or (by the prosecution only) from rulings that terminate a trial on indictment.[3] No appeal or judicial review is available regarding any decision made during the course of a criminal trial, for example, to admit certain evidence; the appropriate remedy lies in an appeal against conviction, when all purported errors may be considered.

Although appeals against sentence to the Supreme Court are possible, they are extremely rare. This is due to the role of the Sentencing Council for England and Wales[4] in producing guidelines aimed at promoting consistency in sentencing, to which sentencing judges must have regard.[5] Where the Sentencing Council has produced a

[2] Supreme Court Practice Direction 12 <https://www.supremecourt.uk/procedures/practice-direction-12.html> at 12.1.5-12.1.6. See also Criminal Appeals Act 1968, section 33, and Criminal Appeal (Northern Ireland) Act 1980, section 31.

[3] Criminal Appeals Act 1968, section 33; Criminal Appeal (Northern Ireland) Act 1980, section 31.

[4] See <https://www.sentencingcouncil.org.uk/>.

[5] Coroners and Justice Act 2009, section 125.

guideline, it is unlikely that its application will give rise to a point of law, let alone one of general public importance that the Supreme Court ought to consider.

2 - *Are the proceedings before the Supreme Court a last-instance check on the merits or do they only deal with the compliance of the lower courts' decisions with the relevant legislation? How does the Court establish the principle of law? In the most relevant cases or in the case of conflict between two Court's chambers, can the Grand Chamber/Plenary Assembly rule on the case or settle the conflict?*

The Supreme Court is not concerned with adjudicating the facts of cases that come before it, but rather with settling questions of law. In the UK system, a substantial degree of deference is generally given to the original finder of fact. In criminal proceedings, that is the trial judge or jury; while the findings of fact are therefore rarely express on conviction, they may be identified by the sentencing judge or identifiable by the process of reasoning that the jury must have followed to reach a guilty verdict.

As noted below, the key question on a conviction appeal will be whether the conviction is 'unsafe'; that is, whether there is any 'lurking doubt… which makes us wonder whether an injustice has been done'.[6] Not every error will cause a conviction to be 'unsafe'. Common bases for appeal by convicted defendants are that certain evidence ought not to have been permitted to go before the jury, or that the trial judge wrongly directed the jury on the law to be applied. Again, these are questions of law, rather than of fact.

Decisions of the Supreme Court are binding on all the lower courts, as the Supreme Court sits at the apex of the judicial system. It can therefore determine any conflict among different compositions of the courts below. The Supreme Court does not have separate chambers. The court has the power to overrule its own earlier decisions and will do so where it is recognised that an earlier decision was incorrect or is no longer applicable.

3 - *What are the decision-making powers of the Supreme Court? In particular, can the Supreme Court re-determine the punishment to be applied, and if so, to what extent?*

The Supreme Court has the power 'to determine any question necessary to be determined for the purposes of doing justice in an appeal to it under any enactment'.[7] In relation to criminal appeals specifically, the Supreme Court 'may exercise any powers of the Court of Appeal or may remit the case to the Court'.[8] The powers of the Court of Appeal are to allow an appeal against conviction and quash the conviction if they think it

[6] *Cooper* [1969] 1 QB 267.
[7] Constitutional Reform Act 2005, section 40.
[8] Criminal Appeal Act 1968, section 35.

unsafe; otherwise dismiss the appeal;[9] or substitute a verdict of guilty to an alternative offence, the facts of which must have been accepted to convict originally. Where the verdict is substituted, the appeal court may pass an equal or lower sentence than was originally imposed. [10] The court may then also re-sentence the offender for related offences of which they remain convicted.[11]

The Court of Appeal, and thus also the Supreme Court, has the power to quash a sentence that is the subject of an appeal and re-sentence the offender in a manner that the trial court could, if it considers that the appellant should be sentenced differently. However, in so doing, the court should ensure that the appellant is not more severely dealt with on appeal than below. [12]

Where a conviction is quashed, the appeal court may order that the defendant be retried, if the interests of justice appear so to require.[13]

[9] Criminal Appeal Act 1968, section 2.
[10] Criminal Appeal Act 1968, sections 3 and 3A.
[11] Criminal Appeal Act 1968, section 4.
[12] Criminal Appeal Act 1968, section 7.
[13] Criminal Appeal Act 1968, section 11(3).